REPORT BY THE

AUDITOR GENERAL

OF CALIFORNIA

THE SYSTEM FOR ADJUDICATING WORKERS' COMPENSATION DISPUTES CAN BE ACCELERATED WITHOUT A BUDGETARY INCREASE

P-045

FEBRUARY 1982

REPORT BY THE

OFFICE OF THE AUDITOR GENERAL

TO THE

JOINT LEGISLATIVE AUDIT COMMITTEE

045

THE SYSTEM FOR ADJUDICATING WORKERS' COMPENSATION DISPUTES CAN BE ACCELERATED WITHOUT A BUDGETARY INCREASE

FEBRUARY 1982

California Legislature

Joint Legislative Audit Committee

925 L STREET, SUITE 750
SACRAMENTO, CALIFORNIA 95814
(916) 445-0371

WALTER M. INGALLS
CHAIRMAN

STAFF
WALTER J. QUINN
CHIEF CONSULTANT
ROBERT W. LUCAS
PRINCIPAL CONSULTANT
CHARLES T. SCHULTZ
SENIOR CONSULTANT
GWEN YOUNKER
COMMITTEE SECRETARY

SENATE MEMBERS
ALFRED E. ALQUIST
RUBEN S. AYALA
ROBERT G. BEVERLY
PAUL CARPENTER
JOHN DOOLITTLE
KEN MADDY
VICE CHAIRMAN
ROBERT PRESLEY
ASSEMBLY MEMBERS
LEROY F. GREENE
CHARLES IMBRECHT
ERNEST KONNYU
RICHARD ROBINSON
MARILYN RYAN
JOHN VASCONCELLOS

February 25, 1982 045

The Honorable President pro Tempore of the Senate
The Honorable Speaker of the Assembly
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report concerning accelerating the adjudication process of the Workers' Compensation Appeals Board (WCAB) without hiring additional referees. Specifically, the WCAB should schedule referees for hearings for all available hearing time, eliminate wasted hearings, control the amount of continuances, and use pro tempore referees to preside at conference hearings. Additionally, an annual savings of over $1 million can be realized by replacing the court reporters with electronic recording devices, however; this requires a legislative change allowing the WCAB to use electronic recording devices. Finally, the WCAB could reduce injured workers' reliance on litigation by expanding the Information and Assistance Bureau.

Respectfully submitted,

WALTER M. INGALLS
Chairman, Joint Legislative
Audit Committee

TABLE OF CONTENTS

	Page
SUMMARY	i
INTRODUCTION	1
CHAPTER I -- THE WORKERS' COMPENSATION APPEALS BOARD CAN ACCELERATE THE ADJUDICATION PROCESS WITHOUT A BUDGET REQUEST TOTALING $4 MILLION ANNUALLY TO HIRE MORE REFEREES	6
SUMMARY	34
CHAPTER II -- THE WORKERS' COMPENSATION APPEALS BOARD COULD SAVE $1 MILLION ANNUALLY BY USING ELECTRONIC RECORDING DEVICES TO RECORD HEARINGS	36
SUMMARY	43
CHAPTER III -- THE DEPARTMENT OF INDUSTRIAL RELATIONS SHOULD ACT TO REDUCE INJURED WORKERS' RELIANCE ON LITIGATION	44
SUMMARY	55
CHAPTER IV -- CONCLUSIONS AND RECOMMENDATIONS	57
RESPONSE TO THE AUDITOR GENERAL'S REPORT	
Department of Industrial Relations	65
APPENDICES	
APPENDIX A -- NUMBER OF CONFERENCES AND TRIALS CONTINUED PER CASE FOR SAMPLE OFFICES FISCAL YEARS 1977-78 THROUGH 1978-79	A-1
APPENDIX B -- AVERAGE LENGTH OF ADJUDICATION PROCESS IN MONTHS REPORTED BY NUMBER OF HEARINGS PER CONTINUED CASE FOR SAMPLE OFFICES FISCAL YEARS 1977-78 THROUGH 1978-79	B-1
APPENDIX C -- RESOLUTION OF CASES BY INFORMATION AND ASSISTANCE OFFICERS CALENDAR YEAR 1980	C-1

SUMMARY

We have reviewed the process used by the Workers' Compensation Appeals Board (WCAB) for adjudicating claims of injured workers. The Constitution of the State of California requires that the workers' compensation system accomplish justice expeditiously. However, the WCAB's adjudication process requires an average of 12 months to complete.

Delays in California's system are caused not only by the Workers' Compensation Appeals Board but also by parties to the litigation. A lengthy adjudication process can be harmful to all parties involved. Some applicants may be denied needed workers' compensation benefits while awaiting a hearing. Delayed adjudication sometimes slows injured workers' convalescence and rehabilitation. Moreover, delays sometimes cause workers to relinquish their rights to adjudication of their workers' compensation claims. Workers' compensation insurance companies also may be adversely affected because delayed cases extend the length of litigation as well as increase medical costs.

The WCAB attributes delay to understaffing. We have found, however, that through increased productivity, the WCAB could increase its staffing by the equivalent of 33 positions. First, we found that the WCAB is not scheduling referees to hear cases during all available hearing time. WCAB officials report that 24 hours a week is a reasonable standard for the amount of time that a referee should spend in hearings. The remaining 16 hours a week are used to prepare decisions. However, none of the offices in our sample was meeting this standard. As a result, we identified the equivalent of 10 unused referee positions resulting from the WCAB's not fully scheduling calendar time.

We also found that both the parties to cases and the scheduling practices used at WCAB district offices were wasting scheduled hearing time. Hearings are wasted when a scheduled hearing does not take place or when the hearing could not be held because one or both parties were unprepared. Sometimes WCAB scheduling practices also cause hearing time to be wasted. Based upon the cases we reviewed at four district offices, we determined that 16 percent of the hearings were wasted. This percentage yields 16,801 wasted hearings, totaling 9,409 hours, during fiscal years 1977-78 and 1978-79. These wasted hearings also consume the equivalent of five referee positions at four of the offices we visited.

In addition, we determined that the WCAB should use pro tempore referees to preside over conference hearings. The WCAB conducts conference hearings to facilitate settlements on cases or, failing that, to frame the issues for regular hearings and to determine the amount of hearing time required. During 1980, the WCAB used 18,068 hearing hours statewide for conducting conference hearings and resolving disputes informally. The WCAB could institute a system using workers' compensation attorneys as pro tempore referees to conduct conference hearings at no cost. As a result, 18 more referee positions would be available.

Finally, our review indicated that the WCAB could save approximately $1 million annually by eliminating court reporter positions, substituting transcriber-typists for some of the court reporters' duties, and purchasing tape recorders to be run by recording monitors. Because the availability of court reporters to record court proceedings is currently limited, the use of other court resources, including hearing rooms and referees, is also restricted. Access to electronic recorders would be unlimited, a factor that would result in greater use of court resources.

We also reviewed the performance of the Information and Assistance Bureau and concluded that the Department of Industrial Relations should act to reduce injured workers'

reliance on the litigation process. The Information and Assistance Bureau within the Department of Industrial Relations was designed to help resolve disputes informally and to minimize unnecessary litigation. Based on the sample of cases we reviewed and the statewide workload trends for the WCAB, we determined that the Information and Assistance Bureau is effective in accomplishing these tasks. Additionally, the administrative process used by the Information and Assistance Bureau is less expensive than the WCAB's litigation process because it involves fewer people and less-complicated procedures. Consequently, the State saves money when injured workers use the Information and Assistance Bureau to resolve disputes. Injured workers, employers, and workers' compensation insurance carriers also save money by using the administrative resolution process because they do not necessarily have to hire an attorney.

We have also found that prevailing attitudes cause injured workers to be predisposed to litigation. These attitudes can be mitigated by increased outreach activities by the Information and Assistance Bureau. We have also identified factors within the Department of Industrial Relations that limit the use of the Information and Assistance Bureau.

To ameliorate all these problems, we have recommended changes in the WCAB's policies and procedures for scheduling hearing time. Additionally, we propose that the WCAB implement a pilot program using pro tempore referees to conduct conference hearings. Finally, we recommend that the Legislature enact a statute enabling the WCAB to record hearings with electronic tape recorders.

To reduce injured workers' reliance on the litigation process, we recommend that the Department of Industrial Relations amend its Rules of Practice and Procedure to require that all applications filed by injured workers who are not represented by attorneys be referred to the Information and Assistance Bureau. We also recommend a pilot program to refer WCAB cases involving specific injuries resulting from one incident to the Information and Assistance Bureau.

INTRODUCTION

In response to an audit request by the Joint Legislative Audit Committee, we have reviewed the extent and causes of delay in the adjudication process of the Workers' Compensation Appeals Board (WCAB) and the performance of the Information and Assistance Bureau. This audit was conducted under the authority vested in the Auditor General by Sections 10527 and 10528 of the Government Code.

The first three chapters of this report analyze the reasons for delays in the adjudication process and discuss ways of accelerating it. Chapter IV presents our conclusions and specific recommendations for increasing the efficiency of the process.

Background

The Workers' Compensation Appeals Board is part of the Department of Industrial Relation's Division of Industrial Accidents. The WCAB has two separate governing bodies. The Appeals Board, through its seven commissioners, exercises all judicial powers. The Administrative Director of the Division of Industrial Accidents controls all other aspects of the WCAB. The WCAB has 135 referees in 23 district offices throughout the

State.* For fiscal year 1981-82, its budget, which is supported by the General Fund, totals approximately $23.8 million.

The Division of Industrial Accidents also administers the Information and Assistance Bureau, whose 15 offices are located at WCAB district offices throughout the State. The bureau's fiscal year 1981-82 budget, also supported by the General Fund, is approximately $900,000.

Workers' compensation law requires that, when an employee is injured on the job, the employer is responsible for providing necessary medical treatment. If the employee is temporarily disabled so that he or she cannot work, the employee is entitled to temporary disability payments. If the injury results in a permanent disability, the employee is entitled to compensation based on the extent of the disability and the employee's occupation and age.

* The Labor Code uses the term "referee." The Rules of Practice and Procedure of the WCAB uses the term "workers' compensation judge."

Either party may file an application for adjudication of claim with the WCAB if an injured employee and his or her employer or the employer's workers' compensation insurance carrier have disputes arising from work injuries. The WCAB is a court of limited jurisdiction designed to handle workers' compensation issues. Parties to a claim for compensation may also use the services of the Information and Assistance Bureau for resolving disputes without formal proceedings.

Scope of the Review

To determine the length of the adjudication process and to analyze the causes of delay, we reviewed a random sample of approximately 900 case files at five WCAB district offices located in Sacramento, San Jose, Santa Ana, and Los Angeles. From these case files, we identified the type of injury, the length of the adjudication process, the number of hearings, and their outcomes. We compiled data from monthly statistical reports on workload and reviewed the 1980 hearing calendar in four of the offices we visited.

We also reviewed the performance of the Information and Assistance Bureau. We analyzed a random sample of 800 cases from the four bureau offices associated with the WCAB district offices we visited. After reviewing the type of injury and the nature of the complaint, we determined whether

the information and assistance officer was able to resolve it. To assess the bureau's effectiveness thoroughly, we followed up on each case to determine whether the injured worker also filed an application for adjudication with the WCAB. Such an action would indicate that the bureau was not effective in resolving the dispute.

In addition to gathering data from various case files, we also interviewed staff at various levels of the operations, including members of the Workers' Compensation Appeals Board and the Administrative Director of the WCAB. We interviewed the referees in charge to determine how hearing time was scheduled and to identify procedures unique to each office. We interviewed referees to determine their work habits and to provide information on specific cases we reviewed. We also spoke with secretaries and clerks to determine office procedures.

We performed several comparative analyses using other states and other court systems. We contacted agencies similar to the Workers' Compensation Appeals Board in five other states to review their procedures. We also conferred with representatives of other court systems in this State and in other states to assess alternatives to using court reporters to

produce records of hearings. Finally, we contacted other court systems within California to review their use of pro tempore judges.

CHAPTER I

THE WORKERS' COMPENSATION APPEALS BOARD CAN ACCELERATE THE ADJUDICATION PROCESS WITHOUT A BUDGET REQUEST TOTALING $4 MILLION ANNUALLY TO HIRE MORE REFEREES

The Constitution of the State of California requires that the workers' compensation system accomplish justice expeditiously. However, the adjudication process currently requires an average of 12 months to complete. The length of the process is a concern because all parties to a dispute may be harmed by a lengthy process. For example, some applicants are denied needed workers' compensation benefits while awaiting a hearing. Delayed adjudication sometimes slows injured workers' convalesence and rehabilitation. Moreover, the delay can cause workers to relinquish their rights to adjudication of their workers' compensation claims. Insurance companies, the defendants in these cases, are also adversely affected. A lengthy adjudication process can increase the costs of litigation and medical care on cases.

Delays in the adjudication system result from several causes. Sometimes the parties to the litigation are unprepared or fail to appear for a hearing. Also, needed medical evidence

is sometimes not available at a hearing. The WCAB itself is also responsible for two sources of delay: it is not promptly scheduling cases for hearing, and referees are not rendering decisions promptly.

In attempting to solve these problems, the WCAB requested 28 additional referees. The WCAB estimates that such an increase would require a $4.3 million expenditure annually. We have found, however, that this added cost appears unnecessary because the WCAB could increase the productivity of the referees it now employs by implementing several changes. These changes, moreover, would create the equivalent of approximately 33 positions. Scheduling referees to hear cases during all available hearing hours will provide the equivalent of at least 10 referee positions statewide. Eliminating wasted hearings will provide at least 5 referee positions annually at four of the offices in our sample alone. Hiring pro tempore referees to conduct conference hearings will increase the number of referees available statewide for regular hearings by approximately 18 positions.

Length of the Adjudication Process

The Constitution of the State of California requires that the workers' compensation system accomplish justice expeditiously. Although the Constitution does not define the

term "expeditiously," statutes impose specific time limits on two parts of the process. For example, a hearing should be held not less than 10 days nor more than 30 days after the date that a request for hearing is received, and referees should render decisions within 30 days after the case has been submitted to them.

To determine the length of the adjudication process, we analyzed a random sample of approximately 800 cases from four of the offices we visited. The length of the adjudication process varies depending on how the proceeding is initiated. One method is to file an application for adjudication of claim, a form used to provide information about the injury and the disputed issues in the case. Cases initiated through this method represented 60 percent of our sample; these usually involved at least one hearing and required an average of 12 months for adjudication.

The other way of initiating the adjudication process is to submit a settlement. A settlement refers to any disposition that is agreed upon by the parties and that resolves the disputed issues in the case without using the formal litigation process. Parties submit their settlement documents to the referee for approval. This type of case, which represented 17 percent of our sample, required an average of two months to adjudicate.

The remaining 23 percent of the cases in our sample were incomplete; therefore, we could not analyze the length of adjudication. Some cases were dismissed by a referee; some were discontinued by the injured worker; and others were still being litigated.

A Lengthy Adjudication Process is Harmful

The length of California's adjudication process is a concern because all parties to a dispute may be adversely affected by delays. In our review of randomly sampled cases, we identified examples of harmful effects on injured workers. Through discussions with executives of insurance companies, we identified problems they experienced.

Delays in bringing a case to hearing can deny an injured worker needed workers' compensation benefits. We found a case in which a man from Lake Tahoe suffered a hernia in July 1978. His employer fired him in mid-October without providing any workers' compensation benefits. Even though the employee was in pain, his doctor refused to treat him further, including performing surgery, if necessary, unless the WCAB awarded medical benefits. This injured worker, acting without an attorney, requested a hearing in early November and again in December of 1978. A hearing was not held until the end of

March 1979. This five-month delay exceeds by four months the requirement that a hearing be scheduled not more than 30 days after the date it is requested.

Delayed adjudication can also slow an injured worker's convalescence and rehabilitation. In a case in our sample, a doctor wrote that his patient was "still marking time" waiting for something to happen on his case. This delay was not helping his patient's problem; rather, it caused him to fixate on his medical complaint more than ever:

> The more he is allowed to drift, the more he is allowed to sit around and mull about his problems, probably the more he will...be conscious of the various aches and pains in his neck and upper back area.

An insurance company executive also acknowledged this problem. He stated that during extended litigation, injured workers concentrate on their injuries. They become preoccupied by their impairments and their injuries then become chronic.

Sometimes delays cause injured workers to relinquish their rights to adjudicate their workers' compensation claims. In our review, we found a case where a 69-year old maintenance man slipped and fell while working. He filed an application for adjudication and requested a hearing because his employer refused to acknowledge the injury and had not provided either medical benefits or temporary disability benefits. The

employee's doctor had treated him for a while but then refused to treat him further without being paid. His attorney submitted two more hearing requests, one in February and one in December 1979. As of January 1980, 11 months after the first hearing request, the WCAB had still not scheduled a hearing on this case. The injured worker then requested that his case be dismissed because, "due to my ill health, my nerves are bad."

A lengthy adjudication process not only can harm injured workers but also can adversely affect workers' compensation insurance companies, which are the defendants in most cases. Cases that take a long time to adjudicate usually involve many hearings. Insurance company executives explain that because defense attorneys are paid for each court appearance they make on a case, an insurance company's litigation expense is usually much greater for lengthy cases.

Lengthy cases also increase the cost of medical evaluations. After six to eight months, these evaluations need to be updated. Usually, the injured worker sees two doctors--one of his choice and one that the insurance company chooses. The insurance company pays for the medical evaluations, which can cost up to $1,000, whenever the injured worker sees the two doctors.

External Influences Can Lengthen the Adjudication Process

The total length of the adjudication process is influenced not only by the practices of the WCAB but also by the actions of parties to the dispute. Those involved in the dispute consist of the injured worker and the employer's workers' compensation insurance company.

To some extent, parties influence the length of the process by the amount of time that elapses before they request another hearing. In 24 percent of the cases in our sample, parties submitted two or more hearing requests. The delay associated with submitting these requests averages six months.

If the parties choose to settle a dispute without a hearing, they can influence the length of the process by how long it takes them to negotiate and submit the settlement. In our sample, settlements on disputes scheduled for hearings were submitted in 47 percent of the cases. Parties required two months on the average to submit their settlements.

Medical reports and evaluations play an important evidentiary role in WCAB proceedings, and they are required to be submitted along with the initial hearing requests. During a hearing, however, additional medical evidence is sometimes

needed and delays can result. One major source of delay is that claimants have difficulty obtaining appointments with the required medical specialist. Further, preparing the medical report and sending it to the WCAB can also slow down the process. Delays in receiving physicians' reports contributed to extending the length of the adjudication process in 7 percent of our cases. They delayed the process an average of four months.

The WCAB Is Not Holding Hearings Promptly

A very significant reason for the delays in the adjudication process is that the WCAB is not holding hearings promptly. Our review showed that 96 percent of the regular hearings and 98 percent of the conference hearings in our sample were not held within 30 days. The Labor Code requires that "a hearing shall be held not less than 10 days nor more than 30 days after the filing by the applicant or his attorney of a declaration that he is ready to proceed."

The WCAB conducts two different types of hearings. A conference hearing is a proceeding that can serve four functions: it can ascertain if a case involves genuine disputes requiring resolution by the WCAB; it can assist parties in resolving disputes; it can narrow the issues; and it

can expedite preparation and trial if a regular hearing is necessary. The second type, a regular hearing, is a proceeding set to receive evidence.

In the offices we visited, we found that 96 percent of the regular hearings in our sample were not held within 30 days after the parties declared that they were ready to proceed. The average delay was four months. Ninety-eight percent of the conference hearings were not held within 30 days after the parties requested a hearing. For conference hearings, the average delay was three months.

Contrary to the statutory mandate, few of the WCAB district offices statewide are holding hearings within 30 days after parties declared they were ready to proceed. Based upon monthly reports submitted by district offices, we found that none of the 23 offices is complying with the mandate in its scheduling of regular hearings. Waiting time for regular hearings ranged from 1.4 to 7.8 months in fiscal year 1980-81. In scheduling conference hearings, none of the district offices in our sample is complying either. Waiting time for conference hearings in the other 18 offices ranged from 1.1 to 4.7 months for fiscal year 1980-81.

Aside from reviewing monthly reports, we analyzed our sample data to determine the extent of the delay caused by the scheduling backlog. We found that cases were delayed an average of five months.

Failure to comply with this mandate makes the adjudication process especially lengthy for a case that has more than one hearing. Unless the case needs an emergency hearing, it receives the first available date on the hearing calendar, which always has a sizeable backlog. Some cases in our sample had as many as seven hearings.

Referees Are Not Rendering Decisions Promptly

The WCAB contributes to delaying the process when its referees do not render their decisions promptly. We found that 66 percent of the referees' decisions were completed within 30 days after the cases were submitted. Reasons for these delays in rendering decisions included inadequate clerical support and the increasing complexity of cases. The Labor Code requires that within 30 days after the case is submitted, a referee shall determine the rights of the parties based upon all facts involved in the controversy and then issue an award, order, or decision.

In cases where the referee was required to render a decision, our sample data revealed that 66 percent of the decisions were completed within 30 days after the cases were submitted. The other 34 percent were completed in an average of 67 days. In those cases where parties submitted settlements, we found that 83 percent of the orders and awards approving settlements were completed within 30 days after the cases were submitted. The other 17 percent were completed in an average of 75 days.

We interviewed a number of referees and WCAB officials to determine why these delays in rendering decisions and approving settlements were occurring. They attributed these delays to many causes. The primary cause seems to be inadequate clerical support. Referees must dictate summaries of evidence in each case they hear prior to rendering a decision. Getting the transcribed copy of the evidence summary back from the court reporter can take up to 30 days in some offices. The heavy workload of the referees' secretaries in typing decisions and generally managing files can also be a factor in delaying decisions.

Referees also mentioned that cases are becoming more complex. As a result, reading and analyzing all of the evidence and performing legal research is becoming more

time consuming. Consequently, they report that they cannot render a decision within the required 30-day time period.

We were unable to substantiate the delay associated with each of these causes in the case files we reviewed. Therefore, we cannot evaluate the validity of the 30-day time period because we cannot accurately predict the effect of our recommendations on the whole decision-making process. If the recommendations in Chapter II on the court reporting system were adopted, then the delay attributed to inadequate clerical support would probably be alleviated. However, after all the recommendations are implemented, the WCAB will have to evaluate the appropriateness of requiring referees to render decisions within 30 days.

There Are Alternatives to Hiring More Referees

The WCAB stated that delays in scheduling cases and in rendering decisions result from the inability of referees and clerical staff to handle the present workload. From fiscal year 1977-78 to 1979-80, the number of applications for adjudication filed increased by 20.5 percent. During those years, the WCAB received only five additional referee positions, a 3.8 percent increase. For fiscal year 1981-82, the WCAB submitted a budget change proposal requesting an

additional 28 workers' compensation referees, costing $4.3 million annually, to handle the increasing workload and the backlog. The budget request was denied.

We have identified other measures that will permit referees to use their time more effectively. Adopting these measures will provide the WCAB with the equivalent of approximately 33 referee positions without requiring an additional expenditure. These measures and their effects are as follows:

- Scheduling referees to hear cases during all available hearing hours will provide the equivalent of at least 10 referee positions statewide annually;

- Eliminating wasted hearings will enable the referees presently employed to hear more cases and thereby reduce the need for at least 5 additional referee positions annually at four of the sample offices alone; and

- Using volunteer pro tempore referees to conduct conference hearings will release WCAB referees statewide to try additional cases that would otherwise require approximately 18 positions a year.

To arrive at the number of referee positions saved, we calculated the amount of hearing time that each of these measures would save. We then divided the number of hearing hours allotted to a referee position, 1,011, into the amount of hearing time saved by each proposal.

The WCAB Should More Efficiently Schedule Available Hearing Time

The WCAB is not scheduling referees to hear cases for all available hearing time. We found a number of reasons why this occurred. First, referees in charge at various district offices use different scheduling practices. Additionally, two district offices are operating special programs involving referees, thus reducing the referees' availability for hearings. Finally, one calendar clerk was not scheduling hearings for time slots made available because of cancellations.

WCAB officials report that 24 hours a week is a reasonable standard for the amount of time that a referee should spend in hearings. The referee can use the remaining 16 hours a week to prepare decisions. We found that not one of the offices in our sample was meeting this standard. We determined that the equivalent of 10 referee positions are wasted because the WCAB does not fully schedule calendar time.

In each office we visited, we found that referees were scheduled for varying amounts of hearing time in calendar year 1980. Referees in the San Jose and Sacramento offices were scheduled 20 hours a week. Santa Ana referees were scheduled for 21. Finally, in Los Angeles, we found 22 hours scheduled.

One reason why the WCAB offices did not schedule hearings for all of the available calendar time is that the management of the Division of Industrial Accidents has not formally established a statewide standard for the amount of time that referees should spend in hearings. Consequently, the referees in charge at the WCAB district offices have established varying workload policies for their respective offices.

In Sacramento and San Jose, the referees in charge did not schedule hearings on Friday afternoons. The attorneys practicing at those offices requested this policy because they interview clients and take depositions on Friday afternoons, and they do not want to be scheduled for hearings. This policy accounts for 1,834 hours of available hearing time that was not used in 1980. These offices have recently changed this practice and now schedule hearings on Friday afternoons. The referees in Sacramento and San Jose are now scheduled for hearings 24 hours a week.

The Santa Ana WCAB district office was not fully scheduling calendar time because it does not have a hearing room available for each referee. The referee in charge schedules approximately 21 hearing hours a week per referee. This practice resulted in 1,322 unscheduled hearing hours for 1980. The referee in charge uses this schedule because he is short two hearing rooms and says he cannot schedule the referees for more hearing hours. However, if two referees each day were not scheduled for hearings but rather allowed to work on decisions, the referee in charge would be able to schedule his referees in hearings 24 hours a week. This rotating schedule is used in Sacramento, San Jose, and Los Angeles to schedule referees for a full 24 hours a week in hearings.

The referee in charge in Santa Ana chooses not to use this system because he feels that a more meaningful workload measure is the number of cases heard per week rather than the number of hearing hours scheduled. He presently schedules his referees for 30 cases per week. He says that under the four-day rotating schedule, he could only schedule 24 cases per referee. However, if he scheduled 7 or 8 cases per day, four days a week, he could still achieve his standard of 30 cases per week.

Two of the offices we visited were operating special programs that reduced the scheduled hearing hours of some of their referees. Two referees in Sacramento were involved in a special conference hearing program. Because of the large volume of cases heard in this program, the referees were given two days instead of one day per week for decisions. The extra day away from hearings accounted for 466 hours of unused hearing time in 1980.

Some referees in the Los Angeles office were involved in special projects that reduced their hearing time. Three referees took part in an experimental hearing program from May to December 1980. One judge was scheduled for hearings only 12 hours a week, and two judges were scheduled for 15 hours a week. The unused hearing hours resulting from this practice accounted for 339 of the total unused hearing hours in 1980. In addition, from January to July 1980, the referee in charge in Los Angeles did not work the half-time schedule normally worked by a referee in charge because he was reorganizing and supervising the clerical staff. This practice accounted for 319 unscheduled hours. One WCAB official stated that he was unaware that referees were not being scheduled for hearings to enable them to participate in these special programs.

Finally, the calendar clerk in Los Angeles failed to reschedule hearings in time slots where cancellations had occurred. She stated that she had been too busy to keep track of cancelled time slots. This oversight resulted in 226 unused hearing hours. The Sacramento, San Jose, and Santa Ana calendar clerks, however, use these cancelled time slots whenever possible for scheduling cases that referees have given a high priority. The referees' secretaries notify the calendar clerk of a cancellation, and if there are at least 15 days until the hearing time, a notice of hearing can be sent to the parties in another case. This procedure is integrated into the normal scheduling process.

As a result of the inefficient scheduling practices just discussed, the hearing time of referees is not being fully utilized. In four of the offices we visited, we found the equivalent of four referee positions that were not being scheduled for hearings. Statewide, we estimate that at least six more referee positions are not being scheduled for hearings. Thus, we found an equivalent of 10 referee positions that are currently not being used.

The WCAB Should Prevent Hearing Time from Being Wasted

The parties involved in disputes and the scheduling practices at WCAB district offices are the two principal causes of wasted hearing time. A hearing is considered wasted when it does not take place as scheduled. Sometimes parties do not appear for hearings they requested, or they cancel hearings at the last minute. Further, hearings are wasted when referees are unable to evaluate medical evidence because the parties do not have the physicians' reports with them. Additionally, hearing time is wasted because WCAB personnel fail to reschedule hearing times made available because of cancellations.

Based upon our review of cases at four WCAB district offices, we determined that at least 16 percent of the hearings were wasted. This percentage yields 16,801 wasted hearings, totaling 9,409 hours, during fiscal years 1977-78 and 1978-79. Wasted hearing time also wastes referee positions. In four of the offices we visited, we identified five referee positions that could have been saved annually if this problem were solved. The potential for even greater savings exists statewide, but this figure cannot be specified because we did not review the remaining 19 offices. Furthermore, wasted hearings delay the adjudication process because they frequently

result in continuances. A continuance occurs when a referee has to schedule another hearing for a case before making a decision.

The parties in a dispute are expected to submit for decision at a single hearing all matters in controversy. In addition, they are expected to produce at that hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements, and other matters considered essential in the proof of a party's claim or defense.

Based upon the random sample of 800 cases we reviewed at four district offices, we found that 16,801 of the 105,006 hearings scheduled in fiscal years 1977-78 through 1978-79, or 16 percent, were wasted. We reviewed the recorded minutes of these hearings and were able to identify some reasons why hearings were wasted. We found that parties often failed to appear at hearings. Reasons for these actions were not always recorded in the hearing minutes. Referees reported that parties sometimes stated that they did not get a notice of hearing or that they did not have sufficient notification. The WCAB will address this problem when it implements a computerized system to generate a notice of hearing for every case that is scheduled for hearing.

Additionally, in some of the cases, the needed medical evidence was not available for hearings because physicians or attorneys did not file medical reports in time. This filing problem occurred occasionally because medical appointments were scheduled to take place after the date of the hearing. Another reason for wasted hearings is that parties were sometimes not prepared to proceed with the hearing even though they requested that it be scheduled.

During our audit, the WCAB adopted new Rules of Practice and Procedure that became effective July 1, 1981. These changes were designed to eliminate wasted hearings caused by missing medical evidence, unprepared parties, and failure to appear at hearings. The revised form used to request a hearing includes a clause that requires declarants to state, under penalty of perjury, that they are ready to proceed to a regular hearing. A false declaration by an attorney or representative may result in contempt proceedings or removal, denial, or suspension of the privilege to appear before the WCAB. This change was designed to prevent parties from being unprepared at hearings. Any objection to the declaration must be filed and served within 10 days. If an objection is not filed, the WCAB assumes the defending party is ready to proceed, and it sets a trial date.

At present, it is too soon to tell whether these rule changes will be effective in solving the problem of wasted hearings. The WCAB should monitor the effectiveness of these changes and be prepared to adopt other measures if necessary. WCAB officials indicated that they would be willing to fine parties for being unprepared at hearings if the Legislature gave them the power to do so.

Another cause of wasted hearing time is the scheduling practices used by WCAB district offices. WCAB personnel sometimes failed to reschedule cancelled hearing times even though parties cancelled hearings sufficiently in advance of their hearing date so that the WCAB could have rescheduled that court time. WCAB officials indicated that the Policy and Procedural Manual, which comprises all board guidelines, does not provide sufficient guidance in this area. They acknowledged that the manual should be amended to instruct clerical personnel to give priority to scheduling hearings in cancelled time slots.

Similarly, WCAB personnel do not reschedule time slots for hearings cancelled at the last minute. Parties sometimes cancelled within 15 days of the hearing date, but calendar clerks stated that they did not reschedule the court time because statutes require the WCAB to give parties at least 10 days notice of a hearing date. WCAB officials report,

however, that filling those time slots should not be a problem. The referees in charge can contact attorneys who are willing to waive the notice of hearing requirement. In addition, these time slots can usually be used for emergency cases.

Wasted hearings waste court resources, specifically referee hearing hours. Based upon our sample, we estimated that 9,409 hearing hours were wasted over a two-year period in four of the offices we visited.* Eliminating wasted hearings would provide the equivalent of five referee positions annually.

In addition to wasting court resources, wasted hearings frequently result in continuances, which in turn delay the adjudication process. A continuance is an adjournment, and it requires the setting of another hearing date. The Rules of Practice and Procedure explain that requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious. The rules also state that a continuance will be granted only upon a clear showing of good cause. Good cause, however, includes anything that would interfere with the determination of the matter at the scheduled

* We calculated this estimate by multiplying the average time for a hearing in the four offices we visited, 34 minutes, by the number of wasted hearings we found.

time, that denies due process, or that inhibits the referee from developing a complete record. Problems like requests for further medical evaluation, lack of appropriate witnesses, or insufficient court time would prevent the referee from developing a complete record.

We examined the number of continued conference hearings and regular hearings for each case in our sample. Appendix A illustrates the total number of cases continued and the number of times that each was continued. Thirty-three percent of these continuances were avoidable; that is, they were caused by parties who requested hearings but failed to appear or who were unprepared at the hearing.

In many of the case files we reviewed, the hearing minutes were too brief to permit us to analyze the cause of continuances. Thirty percent of the continued hearings in our sample did not contain the reason for the continuance. The Chairman of the WCAB has stated that the hearing minutes are supposed to include the good cause for continuance. These files were deficient because referees granted continuances without properly documenting the reason.

The adjudication of a case was delayed every time a continuance was granted. Of the five offices we visited, we found that an average of five months passed between continued conference hearings, and an average of five months passed between continued regular hearings for the sample of cases we reviewed. We tabulated the average time required to adjudicate each case according to the number of conference hearings and regular hearings held. Appendix B illustrates the amount of time expended for those cases that were continued.

The WCAB Should Use Pro Tempore Referees to Preside over Conference Hearings

The WCAB conducts conference hearings to facilitate settlements on cases or, failing that, to frame the issues for regular hearings and to determine the amount of hearing time that will be required. During 1980, the WCAB used 18,068 hearing hours statewide for conducting conference hearings and for informally resolving disputes. The WCAB could institute a system using workers' compensation attorneys as pro tempore referees to conduct conference hearings. As a result, 18 more referee positions would be available annually, and the WCAB would be able to schedule more regular hearings. This would also assist the WCAB in complying with the mandate requiring

that hearings be held within 30 days of an applicant's request. Implementing this system would require no salary expenditures because attorneys volunteer their time.

As part of their current hearing duties, referees conduct conference hearings on cases. The Rules of Practice and Procedure of the WCAB define a conference hearing as a proceeding set to ascertain if there are genuine disputes requiring resolution by the WCAB, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. For calendar year 1980, we identified 15,035 hours statewide that judges spent conducting conference hearings.

In addition, referees are also being used to staff an Informal Dispute Resolution Unit. This unit provides conference, mediation, and arbitration services for injured workers and other parties to workers' compensation cases. Each year, the three referees in the unit spend more than 3,000 hearing hours informally resolving disputes.

Instead of using referees to conduct conferences and to resolve disputes informally, the WCAB could appoint qualified workers' compensation attorneys as pro tempore referees to perform these functions. In the State's court

system, a pro tempore judge is selected to act in the absence, disability, or disqualification of the regular judge or to act temporarily under other circumstances as provided by constitution or statute. A pro tempore judge has the same authority as a regular judge.

The Superior Court system uses pro tempore judges. For example, they are now used in the Family Court Division of the Santa Clara County Superior Court and have been used in the Family Law Department of the Sacramento County Superior Court. There is little resistance to their use because the attorneys who act as pro tempore judges are specialists in domestic relations. By using pro tempore judges, these two superior courts have reduced their backlogs of hearings.

The use of pro tempore referees by the WCAB has several advantages. First, because a sufficient number of workers' compensation attorneys are available and willing to serve as pro tempore referees, the WCAB probably could schedule many conference hearings in compliance with the statutory mandate that hearings be held within 30 days of the applicant's request. Also, by eliminating the conference hearings from a referee's schedule, the WCAB could schedule more regular hearings sooner. Furthermore, this program could be implemented with minimal cost. The WCAB will incur no salary

expenses because attorneys volunteer their time. Training costs would be negligible because WCAB officials have stated that only minimal training in office procedures would be needed. WCAB officials also state that some district offices could accommodate this program without acquiring additional space. We analyzed hearing room use based on the 24-hour-a-week hearing time standard for each referee. We determined that approximately half the district offices would have hearing rooms available for some or all of the pro tempore referees. Additionally, according to representatives of workers' compensation attorney associations, attorneys acting as pro tempore referees could also conduct conference hearings in their offices.

By implementing a program of using pro tempore referees for conference hearings, the WCAB could gain the equivalent of 18 more referee positions annually.

On September 11, 1981, the WCAB proposed an amendment to legislation it had sponsored to establish procedures for appointing certified workers' compensation attorneys to serve as pro tempore referees. The legislation, Chapter 1150, Statutes of 1981, has recently been signed into law. It authorizes pro tempore referees to serve on a voluntary basis when the parties involved in the dispute give their consent.

WCAB officials report, however, that they are uncertain whether attorneys who initially volunteer to serve as pro tempore referees will want to continue in that capacity on a long-term basis. Furthermore, WCAB officials wonder if the effectiveness of pro tempore referees will be inhibited by the attorneys' reluctance to offend potential clients appearing before them at conference hearings.

SUMMARY

The Constitution of the State of California requires that the workers' compensation system accomplish justice expeditiously. We found, however, that the adjudication process requires an average of 12 months to complete. Both the injured workers and the workers' compensation insurance companies may be harmed by such a lengthy process. The WCAB states that it needs to hire an additional 28 referees to eliminate the delays in the process.

However, we found that making three changes in the current system would permit referees to use their time more effectively. These changes will provide the equivalent of approximately 33 additional referee positions. First, by scheduling referees to hear cases for all available hearing time, the WCAB would have the equivalent of at least 10 referee positions statewide that could be used to conduct hearings. We

also found that correcting the problem of wasted hearing time will produce at least 5 additional referee positions in four of the offices we visited. Finally, we have concluded that if the WCAB were to use pro tempore referees to preside at conference hearings, it would have the equivalent of approximately 18 referee positions statewide for conducting conferences on cases and for informally resolving disputes. Qualified workers' compensation attorneys acting as pro tempore referees could handle these functions. However, WCAB officials are not certain about how long attorneys will cooperate in volunteering their time.

CHAPTER II

THE WORKERS' COMPENSATION APPEALS BOARD COULD SAVE $1 MILLION ANNUALLY BY USING ELECTRONIC RECORDING DEVICES TO RECORD HEARINGS

The Workers' Compensation Appeals Board (WCAB) could save approximately $1 million annually by using electronic recording devices to perform some of the functions now carried out by court reporters. The cost savings will result from replacing court reporters with transcriber-typists and from purchasing tape recorders to be run by recording monitors. Additionally, the new system would provide a cheaper, more accurate method of producing court transcripts and other transcription. Because the availability of court reporters to record court proceedings is limited, the use of other court resources, including hearing rooms and referees, is also restricted. Access to electronic recording devices, however, would not be limited; consequently, there could be more efficient use of court resources.

Description of the System

Federal and state courts and agencies have begun to use electronic recording systems rather than court reporters to record their proceedings. For example, the United States Tax

Court and Supreme Court use tape recorders to record their hearings and have produced transcripts from these recordings. Further, the Judicial Council of California, a state body organized to improve the administration of justice, developed an experimental program for the State's Municipal and Justice courts. Under this program, some courts use tape recorders when reporters are not available.

The Office of Administrative Hearings (OAH) of the Department of General Services has also successfully used electronic recording devices to record its hearings for more than three years. This office is responsible for conducting hearings for 69 agencies under the Administrative Procedure Act. Its hearing procedures are similar to those of the WCAB. All hearings are conducted by OAH hearing officers, and hearings are required to be recorded. The Occupational Health and Safety Administration, the Department of Motor Vehicles, and the Unemployment Insurance Appeals Board also use tape recorders for some of their hearings. These agencies have produced transcripts from the recorded tapes.

An electronic recording system requires a staffing pattern that is different from the one currently used by the WCAB. In the system used by the OAH, recording monitors operate recorders during hearings and maintain logs of the proceedings. The WCAB typically schedules hearings for six

hours each day. If the WCAB were to adopt the use of recording monitors, each monitor would have two hours a day to perform other clerical tasks as needed.

The WCAB job specifications for court reporters indicate that, in addition to reporting hearings, court reporters are also responsible for transcribing hearings, transcribing referee's dictation, and typing legal documents. In consultation with the State Personnel Board, we determined that the job classification "hearing transcriber-typist" would be appropriate for an employee performing the transcription and typing duties currently performed by court reporters. The main difference between the two positions is that the hearing transcriber-typist job classification establishes a minimum typing production level below the actual production level of WCAB court reporters. Based on a survey of four other state agencies using hearing transcriber-typists, however, we found that the actual typing production exceeds the minimum standard and, in fact, is equivalent to that of WCAB court reporters.

We estimated that one hearing transcriber-typist could handle the dictation and transcription needs of two referees. However, the WCAB will have to perform a workload analysis to determine the number of hearing transcriber-typists it will need.

Although implementing an electronic recording device system would displace court reporters, the State Personnel Board has identified three alternatives for reassigning these reporters. The court reporters could be reclassified and trained in new positions within the WCAB; they could be laterally transferred to another court system within state government; or they could be transferred to other court systems outside state government. If these options were not available, the court reporters could be laid off.

Benefits of an Electronic Recording System

Substituting electronic recording devices for court reporters would be both economical and efficient. We based our cost estimates on the four-track recording system used by the OAH. Implementing an electronic recording system to replace the 100 court reporters now employed would save over $800,000 during the first year. After the initial year, during which the WCAB would have to purchase the recorders, the annual savings would be about $1 million. This savings is based upon our estimates that the current reporting system costs approximately $4 million annually to operate, while the electronic recording system would cost approximately $3 million annually.

Use of electronic recording devices would enable the WCAB to handle more economically the increased number of regular hearings that will result from implementing the recommendations we made in Chapter I. If more court reporters were hired to handle this increase, the expenditure would be approximately $4.8 million annually. However, if the increased capacity were provided by electronic recording devices, the cost would be nearly $3.6 million annually, after the first year. This would be a total program savings of approximately $1.2 million.

Adopting an electronic recording system would also save the WCAB money because its computer-aided transcription equipment would no longer be needed. Currently, a computer is used to transcribe and to type stenographic notes. Because recorded tapes will be substituted for stenographic notes, the computer-aided transcription equipment will no longer be utilized. Eliminating this equipment will also eliminate the need for the WCAB to spend an additional $516,000 to bring the existing equipment up to full operational capacity.

Many studies have compared the accuracy of records produced by a court reporter with those produced from electronically recorded tapes. Based on the studies we reviewed, we found that sophisticated recording systems

generally produce more accurate records of hearings.* In 1980, the OAH published a report concluding that an electronic recording system not only saved money but also produced accurate transcripts. Three other studies have concluded that transcriptions from electronic recorders are actually more accurate than those transcribed from reporters' notes. When the number of errors in transcriptions from both types of records were compared, transcripts produced by court reporters contained anywhere from 1.9 to 3.2 times as many errors as transcripts prepared from electronically recorded tapes.

Another unique advantage of an electronic recording system is that parties requesting transcripts can obtain a less expensive copy of the court record in tape form. Currently, a WCAB hearing record produced by a court reporter costs about $68. In contrast, the OAH charges $5 for a copy of the hearing tape. A typical WCAB hearing would require two tapes, totaling $10. Thus, copies of the recorded tape could be available from the WCAB for about one-seventh the current price of a transcript.

* We define a sophisticated recording system as one similar to that currently used by the OAH. This system includes four-channel recording capability, separate record and playback monitoring functions for each channel, and digital counting.

In addition to reducing the WCAB's expenditures, an electronic recording system would also permit expanded use of facilities and personnel. WCAB officials estimate that court reporters are available to record hearings only 50 percent of the time. They spend the rest of their time taking dictation and typing summaries of evidence and minutes of hearings. This restricted availability of reporters reduces the efficient use of hearing rooms and referees. We estimated that referees and hearing rooms could be scheduled only 67 percent of the time for any hearing that required a record.* With the installation of a tape recorder in each room, referees and hearing rooms could be used 100 percent of the time for those hearings requiring a record.

State law is currently ambiguous regarding the use of electronic recording devices in WCAB hearings. Labor Code Section 5708 requires that "all oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter." The term "phonographic reporter" has not been clearly defined or interpreted. The OAH is currently seeking a precise judicial definition of this term. The law needs to be changed to permit the WCAB to use electronic recorders instead of phonographic reporters to record hearings.

* This figure was derived by comparing the availability of 120 hearing rooms, six hours a day, with the availability of 120 court reporters, four hours a day.

SUMMARY

The WCAB could save approximately $1 million annually by using electronic recording devices to record hearings. Such a system would entail purchasing the necessary equipment and hiring monitors and hearing transcriber-typists to replace court reporters. This system would increase the accuracy of the record of the proceeding, expand the WCAB's clerical capabilities, and enable a more efficient use of hearing rooms and workers' compensation referees.

CHAPTER III

THE DEPARTMENT OF INDUSTRIAL RELATIONS SHOULD ACT TO REDUCE INJURED WORKERS' RELIANCE ON LITIGATION

The Information and Assistance Bureau of the Department of Industrial Relations (DIR) was designed to help resolve disputes informally and to minimize unnecessary litigation. Based upon a sample of cases we reviewed as well as statewide trends in the WCAB's workload, we determined that the Information and Assistance Bureau has achieved some success in accomplishing these tasks. Moreover, the administrative process used by the bureau is less expensive than the WCAB's litigation process because it involves fewer personnel and less-complicated procedures. Consequently, the State saves money when injured workers use the bureau to resolve disputes administratively. Injured workers, employers, and workers' compensation insurance companies also save money by using the bureau because they do not necessarily have to hire an attorney.

Although the bureau has been successful in resolving disputes, it has not been fully utilized, and there are variations in workload among the offices we visited. One study

has indicated that injured workers are predisposed to litigation for resolving workers' compensation disputes. However, increased outreach activities by the bureau can combat this attitude. We have also identified factors existing within the DIR limiting the use of the bureau. Finally, based upon a comparative analysis of the programs used by other states to resolve disputes administratively and our analysis of disputes resolved by the bureau, we have concluded that the Division of Industrial Accidents and the WCAB should refer all specific injury cases resulting from one incident to the Information and Assistance Bureau.

The Information and Assistance Bureau is mandated by the Labor Code to provide information and assistance concerning the rights, benefits, and obligations of the workers' compensation law to employees, employers, and other interested parties. The bureau is also mandated to assist in informally resolving disputes. Using the services of the Information and Assistance Bureau is voluntary, and injured workers can always request hearings by the WCAB if they are not satisfied with their settlements.

The Information and Assistance Bureau Can Resolve Disputes More Economically Than the WCAB

The bureau uses an administrative process for resolving disputes that is less expensive to the State than the WCAB's litigation process. One reason for the savings is that the Information and Assistance Bureau employs fewer people. The bureau's process for resolving disputes is also much less complicated than that of the WCAB. Information and Assistance officers do most of their work by telephone and by corresponding with the parties to the dispute. In our review, we found that the bureau has been successful in resolving disputes in 29 percent of the cases it received. The bureau has thus contributed to reducing the number of applications for adjudication filed in WCAB offices. Additionally, injured workers, employers, and workers' compensation insurance companies are spared litigation expenses when the bureau resolves a dispute.

For example, sometimes an employer will not give the name of his or her insurance company to the injured worker. In one such case, the information and assistance officer contacted the Workers' Compensation Rating Bureau and got the necessary information. He then contacted the insurance company and opened a line of communication for the employee. Through the

services of the Information and Assistance Bureau, the employee received his workers' compensation benefits and avoided filing an application for adjudication with the WCAB.

In contrast, when an injured worker files an application for adjudication, the WCAB must perform a number of clerical tasks. It must establish and maintain files, process declarations of readiness, send out notices of hearings, and type hearing minutes, summaries of evidence, and decisions and awards. Furthermore, a referee must prepare to hear the case, conduct anywhere from one to seven hearings on it, and finally make a decision.

The Information and Assistance Bureau also saves the State money because it is successful in resolving some disputes and thus minimizing litigation. Based upon a random sample of 800 cases in the four offices we visited, we determined that the bureau was able to resolve disputes over workers' compensation benefits in 29 percent of the cases it received. The information and assistance officer was able to negotiate the differences between the injured worker and his or her employer or the employer's insurance company so effectively that they no longer needed the officer's assistance to resolve the dispute.

Finally, because of its success in resolving disputes informally, the bureau has contributed to reducing the increase in filing rates in WCAB offices. The first bureau offices were opened in Los Angeles and San Francisco in fiscal year 1977-78. From fiscal year 1977-78 to 1978-79, the statewide increase in applications for adjudication was 21.7 percent. From 1978-79 to 1979-80, there was only a 3.4 percent increase, and in the following fiscal year, the applications filed remained constant. WCAB officials agreed that the Information and Assistance Bureau was partially responsible for the reduction in filing rates. However, other factors, the influence of which cannot be quantified, were also responsible for the reduction.

Certain Factors Cause the Bureau's Workload to Vary

Despite the bureau's effectiveness in resolving disputes, we found that its workload varied among the offices we visited. One reason for the variation in workload is that injured workers prefer to litigate their cases. Also, WCAB district offices have adopted differing policies in their referral of applications filed by injured workers who are not represented by attorneys. As an indication of the variation in workload, requests for assistance in settling disputes ranged

from 17 percent of the WCAB filings in San Jose to 8 percent in the Los Angeles and Santa Ana district offices for calendar year 1980.

In part, requests for the bureau's assistance are limited because injured workers are usually predisposed to litigate their disputes. In 1973, the California Workers' Compensation Institute performed a study to determine why workers preferred litigation. The report indicated that injured workers usually do not know enough about workers' compensation laws to choose for themselves the best method of resolving the dispute. Consequently, they have to rely on employers, claims adjusters, doctors, union officials, friends, and family for advice on how to handle their workers' compensation problems.

The report points out that all of these have deficiencies as sources of information on how to proceed. For example, an employer may not know enough about the laws or may not want to help the workers. The doctor selected by the employer or the workers' compensation insurance company may be indifferent to the workers' needs. Sometimes the insurance company may delay contacting the workers, may not fully advise them of their rights, or may not contact them at all. In addition, union officials, friends, and family often encourage injured employees to hire attorneys.

Thus, because of prevailing attitudes and beliefs, injured workers who have disputes over their workers' compensation claims may believe that hiring attorneys to litigate their claims is necessary to get adequate settlements. According to one referee, however, litigation does not necessarily result in higher awards for injured workers.

The Information and Assistance Bureau is not helpless, however, in the face of the attitudes leading an injured worker to litigate. Some offices have engaged in outreach programs to inform injured workers of the services available through the bureau. The San Bernardino and Pomona offices have conducted a particularly effective campaign. These offices mailed the "Injured Worker" booklet, which contains information on workers' compensation laws and rights, to all individuals who submitted an injury report to a workers' compensation insurance company. From 1979 to 1980, San Bernardino's workload, including all incoming correspondence and telephone calls, increased from 64 percent to 105 percent of WCAB filings, and Pomona's workload as a new office in 1980 was 64 percent of WCAB filings.

Not all offices are able to emphasize outreach activities, however. At some offices, staff are already working at full capacity. For example, the Los Angeles office is staffed with one information and assistance officer and an

assistant. The information and assistance officer there informed us that he is already working at maximum capacity and could not handle more work.

Another reason that the bureau's workload varies is that policies on referring in propria persona applications for adjudication to the information and assistance officer vary among the WCAB district offices. In propria persona (in pro per) applications are those filed by an injured worker without the aid of an attorney. Most offices, except Santa Ana and Pomona, receive referrals of in pro per applications from their WCAB district offices. The referee in charge in Santa Ana has stated that because he does not have direct supervisory powers over the information and assistance officer, he will refer information calls to her but not in pro per applications. The bureau office in Pomona stopped handling in pro per applications because it lost its only secretary position. The remaining 13 offices do receive in pro per referrals. Three of those offices began receiving all the in pro per applications from their WCAB district offices during our audit.

In one WCAB office, the information and assistance officer receives all the in pro per applications but finds her effectiveness limited by the attitude of the referee in charge.

The referee in charge feels that the Information and Assistance Bureau's whole system is wrong. He thinks that it should be staffed by attorneys rather than by people with experience in adjusting workers' compensation claims. He also stated that the bureau's district offices should not be independent units but rather should be under the control of the WCAB referee in charge in each district office. The information and assistance officer also finds that some of the procedures employed by the referee in charge duplicate her efforts. She works with the parties to resolve cases informally and then forwards the settlements to the WCAB for a referee's approval. Rather than approving the settlement by reviewing the file, the referees will set the in pro per settlement for a hearing and require the injured party to appear in a hearing or to present a clear written understanding of the settlement. Such procedures duplicate the efforts of the information and assistance officer and defeat the objective of avoiding the litigation process.

Other States Place Greater Reliance on Resolving Disputes Administratively

The experience of administrative complaint resolution bureaus in other states shows that the WCAB could also increase the types of applications for adjudication it refers to the Information and Assistance Bureau. Arizona, Michigan, and Pennsylvania have bureaus similar to the Information and Assistance Bureau operating within their workers' compensation

agencies. These bureaus handle public relations and inquiries on workers' compensation benefits. They also attempt to resolve disputes that do not require litigation.

The essential difference between these bureaus and California's bureau is that use of California's bureau is strictly voluntary, not mandatory. In other states injured workers' disputes are handled first by the bureau; these disputes are litigated only when the bureau concludes that it cannot resolve the dispute administratively. For example, the Arizona Industrial Commission's Claims Division reviews all petitions for hearing and selects cases that may be settled without adjudication. Claims specialists within the division work with the petitioner and the workers' compensation insurance company to resolve such cases and prevent litigation. The claims specialists review and settle 16 to 18 percent of the petitions, thereby preventing unnecessary litigation.

The issues that are resolved administratively include determining whether the injury is job related, establishing the amount of temporary and permanent disability benefits due the injured worker, and specifying the need for further medical treatment after a case is closed by the insurance carrier. All of these cases involve specific injuries, such as injuries to the head, the back, or the extremities. However, cases that

involve injuries resulting from job stress, such as heart attacks and psychological stress, are always referred to a workers' compensation referee for resolution.

Our analysis of the Information and Assistance Bureau's case information forms shows that California's information and assistance officers, like those in Arizona, are more effective in resolving cases that involve specific injuries than in resolving cases where the injured worker claims the injury has developed over time because of job stress or other factors. The type of complaint does not seem to be a significant factor in predicting whether a case can be resolved administratively. Appendix C contains the results of our analysis of the Information and Assistance Bureau's ability to resolve various types of cases.

Additionally, DIA-WCAB administrators point out that cases involving apportionment cannot be resolved by information and assistance officers. Apportionment is an issue in cases where the injured worker has a pre-existing disability either from industrial or nonindustrial causes. In these cases, the injured worker's employer is liable for only that portion of the worker's disability that is attributable to an industrial injury sustained in his employ.

The Department of Industrial Relations could expand the bureau's ability to handle more referrals if it shifted some resources from the WCAB to the bureau. Transferring these resources to the Information and Assistance Bureau would create additional information and assistance officer positions.

SUMMARY

The Information and Assistance Bureau is effective in resolving workers' compensation disputes. The cost of the administrative process used by the bureau to resolve disputes is less than the cost of litigating cases at the Workers' Compensation Appeals Board. In addition, injured workers, employees, and insurance companies are spared the cost of litigation when the Information and Assistance Bureau resolves cases. Despite these advantages, external influences, such as a general preference for litigation, and internal influences, such as limited referrals of cases by WCAB district offices and an inability to absorb additional work at current staffing levels, have led to restricted use of the Information and Assistance Bureau.

By transferring some positions from the WCAB to the Information and Assistance Bureau, the Department of Industrial Relations could expand outreach activities to reduce injured

workers' reliance on the litigation process. It could also ease the WCAB's workload by referring specific injury cases to the bureau to attempt to resolve them.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

The preceding three chapters in this report discussed separate aspects of adjudicating workers' compensation disputes. In our study, we found that there are a number of interrelated reasons for the delays in the adjudication process. Similarly, there are a number of interrelated actions that the Department of Industrial Relations (DIR) could take to remedy the problems.

For example, in Chapter I we examined the principal causes for delays in the adjudication process, and we found ways to increase the productivity of Workers' Compensation Appeals Board (WCAB) referees by the equivalent of 33 positions. This increased productivity would increase the number of conference and regular hearings that could be scheduled and thus cause an increase in the workload of clerical staff. This additional workload could be handled by the additional clerical staff who would become available if the electronic recording devices discussed in Chapter II were used instead of court reporters to record hearings. Moreover, there could also be a concomitant reduction in the number of cases

requiring a hearing by the WCAB if, as discussed in Chapter III, certain cases were handled by the Information and Assistance Bureau.

RECOMMENDATION

On the following pages, we recommend ways for the Department of Industrial Relations to increase the efficiency of and thus accelerate the workers' compensation adjudication process.

To Make the Adjudication Process More Efficient

The DIR should immediately implement the following changes in the WCAB's procedures for scheduling cases for hearings:

- A workload standard that requires referees to be scheduled for hearings 24 hours a week should be adopted and enforced. Any deviation from this schedule, such as assigning referees to special projects, should be approved by the Chairman of the WCAB and by the Administrative Director of the Division of Industrial Accidents.

- The Policy and Procedural Manual should be amended to instruct referees in charge and calendar clerks to place high priority on scheduling hearings in time slots made available when hearings are cancelled sufficiently in advance of the hearing date so that time remains to serve a notice of hearing.

- The Policy and Procedural Manual should also be amended to include a process for identifying attorneys or other parties in a dispute who would be willing to waive the requirement that notices of hearings be served. This process would enable the referees in charge to schedule hearings in time slots for which sufficient time to serve notice does not remain.

- The referee in charge in each office should monitor the work of his calendar clerk to ensure that calendar time is being fully utilized.

The Department of Industrial Relations should evaluate after one year the effectiveness of the rule changes adopted July 1, 1981. If these rule changes have not proved effective in significantly reducing the number of wasted hearings and continuances, the WCAB should propose legislation empowering it to levy sanctions against parties who fail to appear or who are not prepared for hearings.

The DIR should immediately implement a six-month pilot program using pro tempore referees for conducting conference hearings on cases at selected WCAB district offices. If this program proves effective in accomplishing the objectives of conference hearing as established in the Rules of Practice and Procedure, then it should be expanded statewide.

The DIR and the WCAB should monitor referees' continuance orders to ensure that the specific good cause for continuance appears on the order and that referees are granting continuances only for reasons that constitute good cause.

To Substitute Electronic Recording Devices for Court Reporters

The Legislature should enact a statute enabling the WCAB to record hearings by any means it determines to be accurate and efficient, including electronic recording systems that have been approved by the Judicial Council.

Once such legislation is enacted, the Division of Industrial Accidents and the WCAB administrators should

- Meet with the representatives of the Department of Personnel Administration and the State Personnel Board to design a plan and establish a time schedule for phasing out court reporters;

- Conduct a workload analysis to determine the number of hearing transcriber-typists needed to transcribe referees' dictation and to prepare transcripts;

- Purchase the necessary electronic recording and transcribing equipment;

- Synchronize the implementation of electronic systems with an organized hiring and training program for monitors and hearing transcriber-typists. Referees should also be thoroughly briefed on the new equipment and procedures.

To Increase the Use of the Information and Assistance Bureau

The Division of Industrial Accidents and the WCAB should adopt a provision in the Rules of Practice and Procedure to require referees in charge to refer all *in pro per* applications to information and assistance officers. The initial review of *in pro per* applications by the information and assistance officer should be a mandatory step in the adjudication process.

One year after the recommendations to increase the efficiency of the adjudication process have been implemented, the Division of Industrial Accidents and the WCAB should

conduct a one-year pilot program to refer specific injury cases, excluding those involving apportionment, to the information and assistance officers. If the Information and Assistance Bureau cannot settle the dispute, the case should then be referred to the WCAB. At the end of the pilot program, the Division of Industrial Accidents should evaluate its effectiveness. If the Division of Industrial Accidents finds that the Information and Assistance Bureau is successful in minimizing litigation, it should amend its Rules of Practice and Procedure accordingly and should then redistribute resources from its litigation function to support an expanded Information and Assistance Bureau.

The Division of Industrial Accidents should expand the outreach activities of the Information and Assistance Bureau. This should include mailing information on workers' compensation laws and rights to injured workers who file injury reports.

To Respond Appropriately to All
the Effects of These Recommendations

One year after these recommendations have been implemented, the DIR should conduct a comprehensive workload analysis to determine the appropriate staffing levels of the Workers' Compensation Appeals Board and the Information and

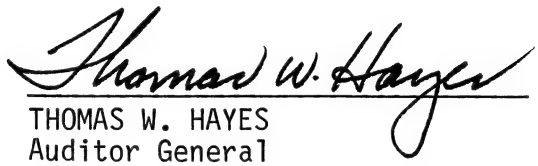
Assistance Bureau. The DIR should also evaluate the validity of the statutory requirement that decisions must be rendered within 30 days after a case has been submitted to a referee.

Finally, we have included the following chart to summarize what effect each of the preceding recommendations will have.

ACTION	EFFECT
Scheduling WCAB referees during all available hearing time.	- Provide the equivalent of 10 referee positions.
Eliminating wasted hearings.	- Provide the equivalent of 5 referee positions.
Using pro tempore referees in conference hearings.	- Provide the equivalent of 18 referee positions.
Substituting electronic recording devices for court reporters.	- Save the WCAB $1 million annually. - Provide a cheaper, more accurate method of producing court transcripts. - Increase the availability of hearing rooms and referees. - Increase the amount of available clerical staff.

ACTION	EFFECT
Increasing the use of the Information and Assistance Bureau	- Save the State money. - Save money for injured workers, employers, and workers' compensation insurance companies. - Minimize the amount of litigation on workers' compensation disputes.

Respectfully submitted,



THOMAS W. HAYES
Auditor General

Date: January 28, 1982

Staff: Steven L. Schutte, Audit Manager
Ann Arneill
Kathleen L. Crabbe
Nancy L. Kniskern

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS—WORKERS' COMPENSATION APPEALS BOARD
455 GOLDEN GATE AVENUE
SAN FRANCISCO

ADDRESS REPLY TO:
P.O. BOX 603
SAN FRANCISCO, CA 94101

January 21, 1982

State of California
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Gentlemen:

Re: Draft Report of the Office of the Auditor General

Your letter of December 30, 1981 transmitting the draft of Report No. 045 indicated that a written response to the draft report should be forwarded to your office by January 7, 1982. This time has been extended to January 22, 1982.

This response is being jointly prepared by the Administrative Director of the Division of Industrial Accidents and the Chairman of the Workers' Compensation Appeals Board. Before dealing with the recommendations contained in the draft report, we would like to make a general statement as to the goals of the DIA-WCAB, the role of the DIA-WCAB in relationship to the entire workers' compensation program and the present ability of the DIA-WCAB to attain the goals. A description of the workers' compensation system consisting of excerpts from the Final Report to the Governor and the California Legislature of the State Workers' Compensation Advisory Committee dated July 1, 1975 is included at the end of this response as Appendix A.

While our response questions many of the solutions recommended in the draft report, we welcome this evaluation by the Legislature through the Auditor General's office and have attempted to cooperate with the Auditor General's staff in their preparation of this report. We recognize that there are defects and imperfections in the functioning of our present system. The report's suggestions for improvement have served to reinforce our commitment to improving the workers' compensation system and we welcome any further suggestions or criticisms which will aid us in this task.

Article XIV, Section 4, of the California Constitution vests the Legislature with plenary power to create and enforce a complete system of workers' compensation including liability for workers' compensation benefits. The Constitution defines a complete system of workers' compensation to include, among other substantive

provisions concerning benefits and safety for injured or deceased employees, full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously and inexpensively. All of these matters are declared the social policy of the state.

The Legislature is also given plenary power to provide for settlement of any disputes arising under such legislation by arbitration or by an Industrial Accident Commission, etc. The Legislature has chosen to utilize this power by creating the Workers' Compensation Appeals Board, formerly the Industrial Accidents Commission, to adjudicate disputes arising under workers' compensation laws. The Legislature has set standards of expeditious resolution by requiring hearings to be set within 30 days of the filing of a Declaration of Readiness to Proceed and decisions to be rendered within 30 days of submission (closing of the record to further evidence or argument). We readily agree these standards are not now being met by the DIA-WCAB. We are, however, of the opinion that the adoption of the recommendations of the draft report will not enable these standards to be met in the future.

In spite of the fact that the workers' compensation program is called a "self-administered program," an insurance carrier or self-insured employer cannot be forced to provide a benefit nor can an injured worker be forced to accept the benefit without an order or decision made by the Workers' Compensation Appeals Board. Unless the DIA-WCAB is able to provide a judicial system that can issue orders in a timely manner, the operation of the workers' compensation program is left to the devices of all the parties in the workers' compensation community.

Between 1969 and November of 1981, the total civilian labor force in California increased from 7,919,000 to 11,504,000. During the fiscal year ending June 30, 1969, there were 56,180 total case filings. As of the fiscal year ending June 30, 1981, there were 123,382. The number of referees hearing and deciding cases increased from 100 to 126. It is easy to see on the basis of case filings alone the DIA-WCAB staffing has not kept up with the increase in volume.

Included in this response as Appendix B is a chart of the experience of the DIA-WCAB since 1975 in regard to new filings, decisions, declarations of readiness to proceed and hearings held.

Although there has been a steady increase in the number of hearings held, the number of decisions has continually lagged behind the number of declarations of readiness to proceed that have been filed. The result has been an ever-increasing backlog of cases to be decided. Again, the staffing of the judicial arm of the DIA-WCAB has not been adequate to keep up with the increased demands on the adjudication system. The chart in Appendix B demonstrates that since 1975 an adequate budget has not been provided to meet these demands.

Chapter 1 of the draft report purports to be an analysis of the work of the Workers' Compensation Appeals Board. It states in part that the Workers' Compensation Appeals Board is responsible for two causes of delay by its failure to promptly schedule cases for hearing and the failure of its referees to render decisions promptly. The failure to promptly schedule cases for hearing and to render decisions are symptoms of delay, not causes. The primary cause of delays in the workers' compensation system is long-term understaffing. 1/

It clearly should be and is the role of the DIA-WCAB to decrease the length of the adjudication process from the average of 12 months stated in the draft report to no more than three months. It therefore will be necessary to establish adequate staffing not only to keep up with the current input of workload, but to decrease the existing lacklog of cases so that in the long run a viable adjudicatory process will be available to the public. The proposed budget for DIA-WCAB for 1982-83 provides for the necessary staffing to meet these goals.

The Workers' Compensation Appeals Board has already adopted new Rules of Practice and Procedure designed to make the system operate more expeditiously. The Board's Rules provide that a Declaration of Readiness to Proceed must be filed with a certification under penalty of perjury that the party requesting a hearing has made an attempt at informal resolution and is ready to proceed to regular hearing on the issues that remain unresolved. New Rules provide for notification of medical examinations before requesting proceedings before the Board and that parties appear with settlement authority at the time of conferences. The Chairman and Administrative Director have also adopted new policies relating to calendaring, continuances and Orders Approving Compromise and Release which are designed to make the adjudication system function more efficiently. While these new rule and policy changes have established a pathway for reform, the greatest single obstacle to carrying out reform is the existing backlog. Without adequate staffing it is naive to believe that more hearings can be scheduled and more decisions rendered promptly in the face of the inefficiencies created by existing backlog. 2/

AUDITOR GENERAL NOTE: The above-referenced footnotes appear on page 81.

The draft report deals with the adjudication system solely on the basis of statistics with no recognition that the California Constitution demands "substantial justice" and that the Labor Code requires decisions to be supported by substantial evidence developed by the Appeals Board or referee in a manner which is best calculated to ascertain the substantive rights of the parties and carry out justly the spirit and provisions of the Workers' Compensation Act. There is no real or meaningful analysis of what takes place either in the hearing or decision-making process. As an example, the report dwells on the time and number of hearings conducted by referees but fails to properly evaluate and analyze the job activities which take place outside the hearing room. The report does not acknowledge that the taking of testimony, receipt of evidence and development of the record is a time consuming and difficult task. There is no reference to the careful and detailed review and weighing of the evidence which a just decision on the merits demands.3/

The report indicates that it takes an average of two months after submission of settlement documents to obtain an order approving from a referee. The report makes no effort to confirm the causes for such delay which are backlog and shortage of clerical staff. While the recently promulgated Policy and Procedural Manual Index No. 6.10.6 providing that a referee shall have 15 days from receipt of settlement documents in his office to take appropriate action will have a pallative effect in expediting Orders Approving Compromise and Releases, it will not make up for lack of clerical support.

The draft report does not recognize that a large number of cases are terminated by settlement because of the inability of the DIA-WCAB to set prompt hearings and render prompt decisions. Often an injured worker must accept a lower recovery in the form of a settlement than that which would be obtained if the injured worker used the full adjudicatory process. The most commonly received complaint from injured workers through their attorneys is that they have been forced to settle cases because they cannot wait for the conclusion of the full adjudicatory process. On the other hand, self-insured employers and insurance companies who utilize the full adjudicatory process to defend against a workers' claim are burdened with additional administrative and litigation cost. Lengthy litigation often results in a higher award of benefits than that which would have been made if the adjudication process were prompt and efficient. Simply put, the present adjudication system fails, in many instances, to accomplish substantial justice for either the employer or injured worker.

AUDITOR GENERAL NOTE: The above-referenced footnote appears on page 81.

On pages 15 through 17 of the draft report, the failure of referees to render decisions promptly is addressed. Although a number of interviews were held with referees and WCAB officials who attributed delays in the decision-making process to inadequate clerical staff, problems in getting transcribed copies of summaries of evidence from court reporters and the increased complexity of the cases, the Auditor General's staff indicates they are unable to substantiate these delays from their review of case files. It should be clear that substantiation of these delays will not be found in case files but in evaluating the work activities of the clerical staff and referees and the legislative and judicial developments of workers' compensation law in the last few years.

There is no indication in the draft report regarding the time a referee spends in reviewing a file and preparing his decision or even how much time the secretary must spend to prepare a final decision. In short, there has been little, if any, study of the effect of clerical shortages as a cause of failure to render decisions promptly. While the report appears to recognize the need for additional clerical help by offering a limited solution of relying on additional employees to be hired if the Legislature passes a bill allowing the use of reporting equipment rather than court reporters, it does not really address the fact that as long as the backlog of cases continues to exist, considerably more clerical time will be required to handle and process cases.

Because of developments in the law and medical science, issues before the Board have become more complex requiring a greater amount of skill and time on the part of referees. Recent advances in medical science linking workers' disability and need for medical treatment to asbestos exposure and exposure to other toxic substances have resulted in more complex issues of causation and liability. In 1977, the Supreme Court decided the case of Wilkinson v. WCAB (1977), 19 Cal3d 491, wherein that court held that where several injuries contributed to the applicant's permanent disability and these successive injuries became permanent and stationary at the same time with the same employer and the same parts of the body were involved, the disability as a result of all the injuries could be combined for the purpose of payment of indemnity. In Associate Construction and Engineering Company v. Cole (1978), 22 Cal3d 829, the Supreme Court held that the employer's (or insurer's) right to credit for a third party recovery was diminished to the extent that the employer's concurrent negligence contributed to causing worker's injuries. This negligence could be determined by a referee in a Workers' Compensation Appeals Board proceeding. The result of this case was to place the burden on

referees to make determinations regarding negligence similar to those which are made in Superior Court. Again, this introduced a more complex type of litigation to the workers' compensation system.

In 1975, the Legislature amended Labor Code §139.5 to provide for mandatory rehabilitation for qualified injured workers. It provided that the Administrative Director of the Division of Industrial Accidents would establish a rehabilitation unit which would foster review and approve rehabilitation plans, adopt rules and regulations which would expedite and facilitate the identification, notification and referral of industrially injured employees to rehabilitation services and coordinate and enforce the implementation of rehabilitation plans. The Director's rules provided for an appeal of Rehabilitation Bureau decisions to a referee with a right of subsequent appeal from that decision to the Workers' Compensation Appeals Board. This new legislation resulted and has continued to result in complex litigation on questions of law and fact involving rehabilitation.

In 1978, Labor Code §132a was amended by the Legislature to provide that any employer who discharges, threatens to discharge or in any manner discriminates against any employee because the latter has filed or made known an intention to file an application with the Appeals Board or because the employee received a rating, award or settlement is guilty of a misdemeanor and subject to the provisions of Labor Code §4553. Any such employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. This introduced again a new type of litigation to the workers' compensation system. The above-mentioned developments in the workers' compensation law reflect but a few of the changes which have increased the complexity of cases heard by referees of the Workers' Compensation Appeals Board.

Included in this response as Appendix C is a graph of the workload input/output statistics based on daily averages per referee. This chart is based upon the output of all referees, including referees in charge. The daily average is also based upon the full number of working days per year and does not take into account sick leave or vacation. The figures are, therefore, understated. It will be noted that approximately three years ago, the number of new filings leveled off, the number of Declarations of Readiness to Proceed leveled off, the number of hearings scheduled leveled off, but in spite of a continuing increase in the number of decisions made, there was a continuing lag between the number of Declarations filed and the number of decisions made. This demonstrates that in spite of the increase in the number of decisions

made and the productivity of each referee, the backlog continues to grow.

The draft report suggests that if referees are scheduled for more hearings and hearing time, an equivalent of ten unused referee positions would result. There is an erroneous assumption that the number of hearing hours is directly related to the number of decisions that can be made.4/The graph submitted shows that there is not a direct correlation between the number of hearings held and the number of decisions made. As indicated above, there is no study of the activities of the referee outside the hearing room.5/There is no recognition of the varying complexity of workers' compensation cases and the fact that a case may demand as much or more time outside of the hearing room as in actual hearing. Frequent complaints have been received from applicants and applicant's attorneys that judges are scheduled for more hearings than they can handle. In other words, referees scheduled for seven hearings a day may be scheduled for estimated times of hearing in excess of 10 hours. This means those cases not heard or settled are continued to a later date. Even where the schedule is not overloaded, most hearings take longer than the estimated or scheduled time. All of this puts excessive pressure on the parties to settle cases with delay guaranteed to litigants who wish a decision on the merits.

The draft report proposes that eliminating wasted hearings will provide at least five additional referee positions annually. The assumption that hearings are wasted when a scheduled hearing does not take place or when the hearing cannot be held is erroneous. The report ignores the fact that in many cases the referee works informally with the parties to resolve the issues, to complete the record and to eliminate future delays.6/Again, no investigation or study was made of the referee's activities outside the hearing process.

Although the new Rules of Practice and Procedure are more stringent with regard to the filing of a Declaration of Readiness to Proceed, there is no experience to show there would be a saving of hearing time equivalent to five referees.

The 1981 session of the Legislature provided authority for the Workers' Compensation Appeals Board to adopt rules providing for the appointment of pro tem workers' compensation referees. The draft report suggests that the use of pro tem referees will eliminate the need for 18 new referee positions. We disagree.

AUDITOR GENERAL NOTE: The above-referenced footnotes appear on page 81.

In the fiscal 1980-81, approximately 193,000 hearing were held by 126 referees. This means that an average of 1,532 hearings were held for each referee position. If 18 referee positions were lost, it would mean that pro tem referees would have to handle 27,500 hearings in the next fiscal year. Actually they would have to handle many more hearings, since the draft report recommends that pro tem referees handle all conferences and there are far more than 30,000 conferences per year.

The Legislature has specifically provided that the pro tempore referee program is a voluntary program and that it is not the intent of the Legislature to use pro tempore workers' compensation referees to reduce the "number of permanent civil service employees or the number of authorized full time equivalent positions" (Labor Code §123.7). In addition, it is necessary that the injured worker and employer or insurance carrier stipulate to the use of a pro tem referee in any particular case. Labor Code §123.7 limits pro tem referees to those who are either certified specialists in workers' compensation or eligible for certification. There are between 400 and 500 certified workers' compensation specialists, approximately 80 of whom are already working as workers' compensation referees. Assuming that a pro tem referee could hear 15 conferences per day and assuming that the total number of conferences required to be heard to replace 18 referees were 30,000 per year, it would require volunteers to work at least 2,000 days per year to hold these conferences. In addition to holding conferences, at least an equal amount of time is required to prepare for each conference. This would mean that it would be necessary to find volunteers among the workers' compensation specialists who would contribute over 4,000 days per year of their time.7/

The workers' compensation bar presently is willing to cooperate with the pro tem program in order to alleviate the tremendous backlog at the Workers' Compensation Appeals Board and to expedite claims. It is doubtful that this enthusiasm will remain on a long-term basis. It is more reasonable to assume that there will be a small percentage of practitioners willing to participate as pro tempore referees on a long-term basis.

The Workers' Compensation Appeals Board promptly proposed rules and scheduled public hearings after the enactment of Labor Code §123.7 and on January 14 and 15, 1982, the Workers' Compensation Appeals Board conducted public hearings on its proposed Rules of Practice and Procedure relating to pro tem judges. It has not been ultimately decided what authority pro tem judges will be given by the Workers' Compensation Appeals Board. In view of the many procedural and practical problems to be worked out before such a program can be initiated, it is doubtful that such a program will

---

AUDITOR GENERAL NOTE: The above-referenced footnote appears on page 82.

or could be put into effect before the next fiscal year. Any conclusion that this program will work in such a way as to save 18 referee positions is premature if not overly optimistic.

Chapter 2 recommends the use of electronic recording devices to record hearings in place of court reporters. Labor Code §5708 provides in part: "All oral testimony, objections in rulings shall be taken down in shorthand by a competent phonographic reporter." All prior legislative attempts to set aside this requirement have been defeated in committee. We do not believe that is is responsible to propose the elimination of court reporters in the 1982-83 fiscal year until it is clear that the Legislature will remove the above restriction and until such a program has been piloted. The draft report recommends that recording equipment be bought for hearing rooms and that a person be hired to monitor that equipment. In addition, the draft report suggests that one hearing transcriber typist could handle the dictation and transcription needs of two referees but concludes that the Workers' Compensation Appeals Board will have to perform a workload analysis to determine the number of hearing transcriber typists it will need. This again demonstrates the need of a carefully monitored pilot program.8/ We therefore recommend that the present hearing reporter system continue until such a time as Labor Code §5708 is amended to permit the use of recording equipment and a reasonable time is allowed to run a pilot project to determine the efficiency of such equipment and necessary staffing levels.8/

Chapter 3 of the draft report recommends that all in pro per applicants be referred to information and assistance officers; that Information and Assistance Bureau be expanded at the expense of the adjudication function and that all specific injuries be assigned to information and assistance officers before proceeding to litigation. We support the first recommendation and are attempting to implement the suggestion in all the Board's district offices. In most of the offices now in pro per applicants are referred to information and assistance officers.

The draft report suggestion that a reduction be made in the budget of the Workers' Compensation Appeals Board to further expand the Information and Assistance Bureau is unrealistic in view of the current backlog situation. The DIA-WCAB 1982-83 budget change proposals already provide for some expansion of the Information and Assistance Bureau. Although the information and assistance program has provided an invaluable service to both injured workers and industry, it has not had the impact on the litigation process that was hoped for.

AUDITOR GENERAL NOTE: The above-referenced footnote appears on page 82.

The proposal to require all specific injury cases to be handled by information and assistance officers is analagous to the ill-fated, administration-supported SB 375 which would have provided for a mandatory administrative procedure within the Disability Evaluation Bureau before permanent disability cases could be adjudicated. The latter proposal was rejected by the workers' compensation subcommittee of the Assembly. The primary reason for the bill's defeat was testimony and evidence presented to the effect that any two-tier system requiring administrative procedure before the right to litigate lengthens the delays in the system. The most frequent example cited was the federal system which handles Federal Employees Liability Act cases, longshoremen and harborworkers cases and black lung cases. This has been labeled by Congress as the most inefficient system ever devised. We do not believe creation of a new bureaucracy will serve to expedite the workers' compensation system.

There is an erroneous assumption in the draft report's recommendation that all single injury claims are simple enough to be handled by an information and assistance officer. This assumption ignores the reality that many single injury claims involve complex issues such as whether the injury is industrial, employment, apportionment, statute of limitations and other esoteric legal issues requiring skills and knowledge beyond that possessed by information and assistance officers.9/

The present adjudication system is structurally sound. With the additional staffing requested in our 1982-83 budget proposal and the implementation of the Workers' Compensation Appeals Board new Rules of Practice and Procedure, the new policies as set forth in the Policy and Procedural Manual of the DIA-WCAB and the implementation of a pro tem judge program, we are confident that the workers' compensation system will again operate in accordance with the mandates of the Constitution and the Labor Code.

Very truly yours,

Franklin O. Grady
Administrative Director
Division of Industrial Accidents

Jack R. Fenton
Chairman
Workers' Compensation Appeals Board

FOG-JRF/RWY/alg
Attachments

AUDITOR GENERAL NOTE: The above-referenced footnote appears on page 82.

CHAPTER VIII

THE DELIVERY SYSTEM

A. The Present System

The phrase "delivery system" describes an institutional arrangement for delivering to injured workers the financial and medical benefits to which the law entitles them following an industrial injury. Though its title suggests a simple mechanism, the system actually encompasses a multiple process ranging from initial payment for medical treatment to appellate proceedings following formal litigation.

In essence the delivery system consists of five elements: (1) benefit administration; (2) governmental administrative supervision; (3) governmental services, such as a medical bureau to evaluate extent of disability and a permanent disability rating bureau; (4) a judicial system; and (5) an appellate system.

The workers' compensation system is basically a method of providing medical care and, in appropriate cases, compensation payments to injured workers. It is a no-fault system with the right to receive benefits immediately vested in the injured employee when the person receives and reports an industrial injury. The Legislature has severely limited the right to litigage each claim both by way of penalty for unreasonable refusal to provide benefits, and by other sanctions administered by the Insurance Commissioner and the Administrator of Self-Insurance.

(1) Benefit Administration

California law requires employers to secure the payment of compensation either by obtaining a valid workers' compensation insurance policy, obtaining a certificate of self-insurance or, in the case of public agencies, by self-administration, the latter category known as being legally uninsured. California uses a direct payment system in that the insurance carrier or employer provides benefits without administrative or judicial interference. To accomplish this, each insurance company, self-insured employer or public agency establishes a department to administer workers' compensation cases. The large majority of compensation cases in California, including medical only cases, are handled by such administrators without interference from any government agency.

(2) Governmental Administrative Supervision

At the present time administrative supervision of workers' compensation claims is the responsibility of three different government agencies.

The Manager of California Self-Insurance Plans, serving under the Director of the Department of Industrial Relations, supervises the case administration of permissibly self-insured employers. This agency has two main objectives. The first is to ensure that the permissibly self-insured employer is financially able to meet its workers' compensation obligations. Such employers must maintain adequate reserves, and must post bond to insure their financial responsibility. The second objective is to ensure that

compensation cases are properly administered so that injured employees receive all proper benefits. To achieve this objective, an audit system exists. It starts with an overall review of the delivery system set up by the employer. The employer's workers' compensation administrator must pass a test on workers' compensation and medical subjects. In addition, the State auditor takes a scientific sample of claims filed and examines them for procedural accuracy. Should too large a percentage of error be discovered, the self-insured employer must go through all of its claims files and correct them. The files are audited for such things as failure to pick up the waiting period, proper compensation rates, full payment of temporary disability, non-payment of transportation expense and non-payment of permanent disability. Permissibly self-insured employers must be audited at least once every three years. Legally uninsured public agencies are not now subject to audit as to their administrative practices.

The Insurance Commissioner supervises workers' compensation insurance carriers. The major concern of the Commissioner is reserves, and should a carrier fail to maintain "adequate" reserves, the Insurance Commissioner may place the company in receivership. California law also provides a method by which the Commissioner arranges for payment of claim in default, because of the financial failure of an insurance company, through assessments against all other carriers writing the same class of insurance.

Practices of insurance carrier administration are audited tri-annually in cooperation with other Western states. The Insurance Code gives the Insurance Commissioner the power to enforce proper administrative practices on insurance companies who fail to meet their obligations.

The Administrative Director of the Division of Industrial Accidents is authorized by law to require insurance carriers, permissibly self-insured and legally uninsured employers to file certain reports in lost time cases. Following the grant of this authority by statute in 1966, the Administrative Director adopted rules governing the filing of notices, known as the Benefit Notice Program.

In cases where the employer or carrier becomes aware of an injury which requires hospitalization or results in more than three days of lost time or results in death, the employer or carrier must give notice of payment or non-payment of benefits to the injured employee or his dependents, with a statement of the amount of benefits paid at the commencement or termination of benefits. A copy of this notice is served on the Administrative Director.

Basically, a notice of start of benefits, a notice of end of benefits, a rejection of claim or denial of benefits, or a notice explaining why benefits have not been paid must be sent to the injured employee or his dependents. If the employer or carrier is denying a claim, the notice must clearly state the reason for the denial, and the Administrative Director has authority to require further explanation, if the explanation given is not clear or is insufficient.

The Administrative Director publishes a regular report on promptness of payment of benefits ranking large carriers, small carriers, self-insured

employers, and legally uninsured employers as to their promptness of payments.

The Labor Code requires employers and doctors to file first reports of work injury with the Division of Labor Statistics and Research, a division under the Director of the Department of Industrial Relations. These reports must be filed within five days of notice of the industrial injury, and must be filed in all cases unless disability resulting from the injury does not last through the day or does not require medical services other than ordinary first-aid treatment.

To assist in the management of this administrative system, the Division of Labor Statistics and Research employs computer technology. Certain information gained from the employers' report of occupational injury or illness and the doctors' first report of occupational injury or illness is entered into the computer; moreover, from the Department of Industrial Relations the computer receives information on the start of benefits, the end of benefits, and the computation of benefits. If the computer discovers an error in computation, the employer or carrier receives notice so that a correction may be made.

A rehabilitation bureau has existed in the Division of Industrial Accidents to supervise vocational rehabilitation programs since compulsory rehabilitation was established by law in January of 1975.

The Division of Labor Law Enforcement, a division of the Department of Industrial Relations, enforces the requirement that employers obtain workers' compensation insurance, as well as ensuring that employers post certain required notices.

(3) Other Governmental Administrative Services

In addition to the above, the Division of Industrial Accidents maintains a permanent disability rating bureau and a medical bureau to serve injured employees, employers and carriers in estimating permanent disability ratings and, in certain cases, in evaluating medical disability and need for treatment. The permanent disability rating bureau employs rating specialists throughout the State at various branch office of the Workers' Compensation Appeals Board. Besides issuing formal permanent disability ratings in litigated cases, the permanent disability rating bureau issues advisory ratings when requested by the employer or carrier, and the injured employee.

The medical bureau examines injured employees at the request of the permanent disability rating bureau, as well as at the requests of Worker' Compensation Judges and the Appeals Board in litigated cases.

In the Los Angeles and San Francisco offices of the Division of Industrial Accidents, information attorneys are available to answer questions from employees, employers and others interested in the workers' compensation system. In addition, a pamphlet in both English and Spanish, containing information on the workers' compensation system, is available for distribution to the public at all branch offices of the Workers' Compensation Appeals Board.

(4) The Judicial System

Except in vocational rehabilitation cases, the Division of Industrial Accidents does not supervise individual cases for compliance with the law. Rather than supervising individual cases, California has a quasi-judicial system for enforcing workers' compensation laws. This is called the Workers' Compensation Appeals Board.

Throughout the State there are 23 offices of the Workers' Compensation Appeals Board. A Presiding Workers' Compensation Judge supervises each office, and there are 113 Presiding Workers' Compensation Judges and Workers' Compensation Judges employed in the State. Staffing of the offices of the Workers' Compensation Appeals Board, including the appointment of Workers' Compensation Judges, is the responsibility of the Administrative Director of the Division of Industrial Accidents. Before their appointment, all Workers' Compensation Judges must have been admitted to the Bar of the State of California, have actively practiced before Courts, boards or commissions for at least five years and either passed a written test or be certified as workers' compensation specialist by the Board of Legal Specialization of the State Bar of California.

For an injured worker to enter his disputed claim into the system, that person or his representative must file an application at one of the offices of the Workers' Compensation Appeals Board. The application, a one-page form supplied by the Appeals Board, may be filed by any party seeking a judicial determination of their rights under the law.

In most cases, the Appeals Board holds some sort of a pre-trial conference to determine whether in fact a dispute exists, whether the parties are ready to try the dispute or whether the dispute may be resolved by agreement. If the parties do not resolve the issues voluntarily, the matter is set for hearing before a Workers' Compensation Judge. Although these hearings do not adhere to all of the technical rules of evidence utilized in the Courts, hearings are generally formal in nature and all parties may be, and usually are, represented by attorneys.

Disputants usually present written medical reports, although they have a right to present oral medical evidence and to cross-examine doctors who have filed written reports.

Following the submission of the case, the Workers' Compensation Judge may obtain a formal rating from the permanent disability rating bureau in appropriate cases, refer the injured employee to the medical bureau or to an independent medical examiner for medical evaluation, or issue a decision without the receipt of further evidence.

In addition to the filing of an application, the parties may enter the system by filing an original Stipulation with Request for Award, or an original Compromise and Release requesting approval from the Appeals Board.

(5) The Appellate System

Any party to a wokrers' compensation case may appeal the decision of a Workers' Compensation Judge to the Workers' Compensation Appeals Board by Petition for Reconsideration filed within twenty days of the issuance of the award. The Appeals Board consists of seven members

appointed by the Governor and confirmed by the Senate. Each member has a term of four years following confirmation, and five of the seven members of the Appeals Board must be attorneys. One member of the Appeals Board is appointed Chairman by the Governor.

Sitting in San Francisco, the Appeals Board has a staff of two deputy commissioners and several attorneys.

When a party files a Petition for Reconsideration, the Workers' Compensation Judge who issued the decision has fifteen days in which to prepare a report and recommendation on the Petition for Reconsideration. When a judge has prepared the report, the file is forwarded to San Francisco where it is assigned on an automatic rotation basis to three members of the Appeals Board for consideration.

The three members review the Petition for Reconsideration and any Answer to the Petition for Reconsideration filed by any other party to the action, along with the evidence contained in the file. The law requires the Appeals Board to act within thirty days of the filing of the Petition for Reconsideration, though it allows one extension of thirty days.

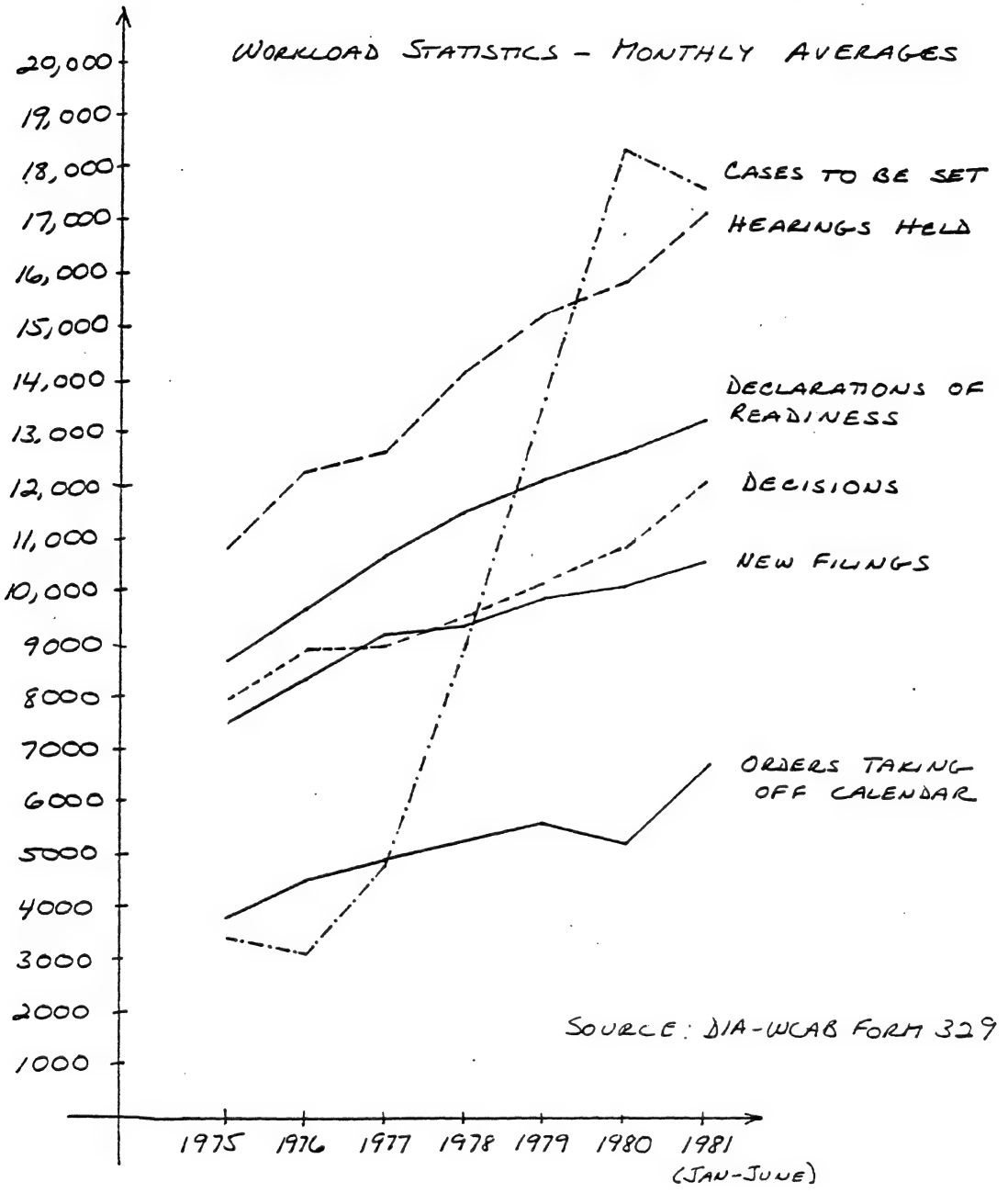
In their decision, the majority of the three members may either grant reconsideration and receive additional evidence, deny reconsideration, or grant reconsideration and issue an immediate decision after reconsideration based upon the existing evidence in the case.

In recent years, the Supreme and Appellate Courts of the State have put limitations on the power of the Appeals Board to grant reconsideration and to reverse a decision of a Workers' Compensation Judge. The Board must give that decision great weight and may not reverse it unless substantial evidence, in light of the entire record, supports a contrary decision. The Supreme and Appellate Courts may not reweigh the evidence in a case, but may only reverse the Appeals Board on questions of law. The foregoing limitations on the power of the Appeals Board to reverse a Workers' Compensation Judge's decision has, however, resulted in some reweighing of the evidence.

After the decision of the Appeals Board, the parties have thirty days in which to file a Petition for Writ of Review with the appropriate appellate court. The Court of Appeal may grant the Petition and set the matter for oral argument, or deny the Petition without opinion. Should it grant the Petition, the Court may issue a written opinion which may be used as precedent if the opinion is certified for publication, but not if the opinion is certified for non-publication.

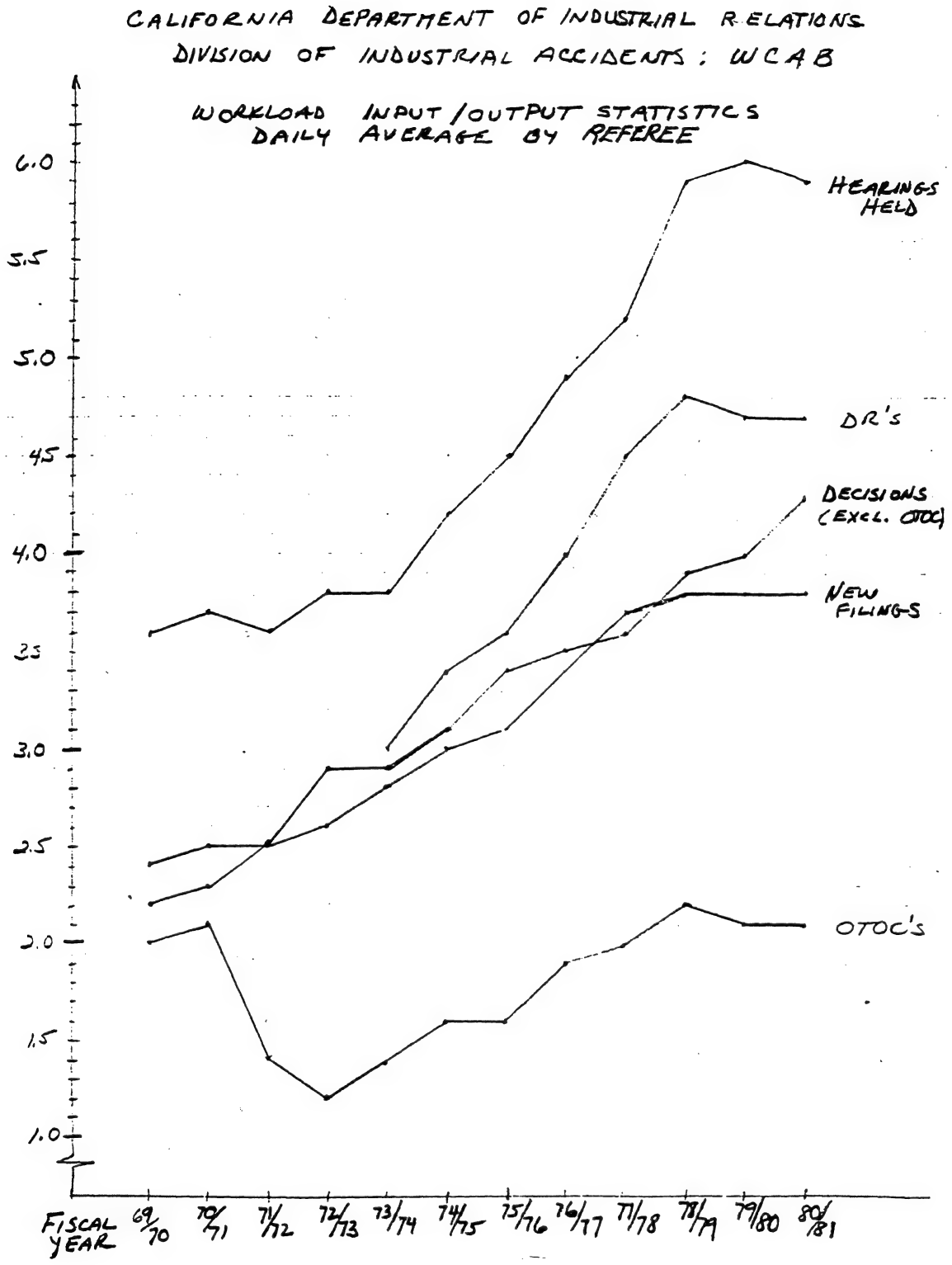
The parties have thirty days after the issuance of a written opinion by the Appellate Court to petition the Supreme Court for a hearing. If the Appellate Court denied the Petition for Writ of Review without opinion, the parties have only ten days to petition for hearing to the Supreme Court.

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS -
WORKERS' COMPENSATION APPEALS BOARD



9/10/81

APPENDIX B


CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS : WCAB
WORKLOAD INPUT/OUTPUT STATISTICS
DAILY AVERAGE BY REFEREE
6.0
5.5
5.0
4.5
4.0
3.5
3.0
2.5
2.0
1.5
1.0
HEARINGS HELD
DR's
DECISIONS (EXCL. OTOC)
NEW FILINGS
OTOC's
FISCAL YEAR
69/70
70/71
71/72
72/73
73/74
74/75
75/76
76/77
77/78
78/79
79/80
80/81

APPENDIX C

AUDITOR GENERAL FOOTNOTES

1/ This statement suggests that we have ignored the actual cause of delay, understaffing. On pages 17 and 18 of the report, we acknowledge the request of the DIA-WCAB for more staff. This request would necessitate a budget increase. Our recommendations, however, provide the DIA-WCAB with the equivalent of 33 new positions by increasing productivity. This alternative, in effect, augments staff without a budget increase.

2/ To reiterate, the effect of our recommendations is to increase the productivity of staff by 33 positions. Such an augmentation would effectively increase staffing to a level identified by the DIA-WCAB as more adequate. Consequently, more hearings could be scheduled and more decisions rendered.

3/ In numerous places in the response, the DIA-WCAB takes us to task for not evaluating and analyzing the job activities which take place outside the hearing room. These activities are the basis of a formula provided to us by DIA-WCAB administrators, which calls for 24 hours per week in hearings and 16 hours per week for decisions. We used this formula in all our analysis related to hearing time. All such analysis, therefore, takes into account the amount of hearing time that DIA-WCAB administrators told us was necessary for activities outside the hearing room.

4/ The savings of ten positions we identified by scheduling available calendar time is totally unrelated to the number of decisions made. Our measure of productivity is the number of hours actually scheduled versus the number of hours available to be scheduled. The differential between these two figures revealed that the equivalent of ten positions were not being used.

5/ As explained in footnote 3, the formula used for computing available calendar time includes 16 hours per week for activities outside the hearing room.

6/ Our assumption that hearings are wasted when a scheduled hearing does not take place is not erroneous. Eighty-four percent of the wasted hearing time resulted from hearings which one or both parties did not attend. A referee would be unable to resolve disputes informally without parties present. The remaining 16 percent of the wasted hearings involved cases needing more medical evidence. Finally, if a settlement did result from a hearing that did not take place, we did not count it as a wasted hearing.

7/ These calculations seem to suggest that the savings of 18 positions could not be achieved. Our calculations, however, support the workability of the proposal. Fifteen conferences per day at fifteen minutes per conference equals 3.75 hours of hearing time. The response suggests that pro tempore judges would need another 3.75 hours to prepare for conferences. Thus, hearing time and preparation time for 15 conferences totals approximately 8 hours, one working day. To accomplish 30,000 conferences per year including hearing and preparation time would require 2,000 days per year not 4,000 days per year. Moreover, the DIA-WCAB would require 167 volunteers working one day per month to conduct 30,000 conferences annually. The DIA-WCAB has already had approximately 300 attorney volunteers to serve as pro tempore judges.

8/ We have not recommended a pilot program. A pilot program is designed to test the workability of a proposal. Electronic recording devices have already been demonstrated as a workable, efficient, and accurate means of recording hearings. We propose a gradual implementation plan that would still permit time for the DIA-WCAB to determine necessary staffing levels.

9/ We acknowledge that single injury claims involving apportionment are beyond the ability of information and assistance officers to resolve. Our recommendation on page 60 has been amended to exclude cases involving apportionment. If information and assistance officers encounter other cases they cannot resolve, they would simply refer them back to the WCAB for litigation.

NUMBER OF CONFERENCES AND TRIALS CONTINUED PER CASE FOR SAMPLE OFFICES
Fiscal Years 1977-78 through 1978-79

Number of Conference Hearings per Case

Number of Regular Hearings Per Case	0	1	2	3	4	5
0	165	194	62	21	8	3
1	30	83	30	11	2	
2	11	41	7		1	
3	6	12	4	1		
4	3	3				
5		3	1			
6		3				

AVERAGE LENGTH OF ADJUDICATION PROCESS IN MONTHS
REPORTED BY NUMBER OF HEARINGS PER CONTINUED CASES
FOR SAMPLE OFFICES
Fiscal Years 1977-78 through 1978-79

Number of Conference Hearings per Case

Number of Regular Hearings Per Case	0	1	2	3	4	5
0	1.8	5.8	10.0	13.0	15.9	18.0
1	12.5	11.8	11.3	13.0	22.0	
2	11.4	15.5	17.9		6.8	
3	15.6	17.3	27.0	28.2		
4	19.2	23.8				
5		24.9	18.9			
6		21.3				

RESOLUTION OF CASES BY INFORMATION AND ASSISTANCE OFFICERS CALENDAR YEAR 1980

Injury Type	Number Sampled	Number Resolved	Percentage Resolved
Extremities	256	86	33.6%
Back	242	66	27.3%
Head	56	15	26.8%
Skin	4	1	25.0%
Internal	68	13	19.1%
Heart, psyche, death	19	0	0.0%
Total	645	181	28.1%
Complaint Type			
Permanent disability	42	14	33.3%
Medical bills paid	309	96	31.1%
Employer not injured/will not report injury	140	40	28.6%
Temporary disability	360	94	26.1%
Compensation rate	85	20	23.5%
Other	163	38	23.3%
Total	1,099	302	27.5%

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
Capitol Press Corps